

[Translation from Dutch]

Covenant

Business Licence 2013

A modernisation of the reproduction rights scheme

This Covenant is a result of consultations between the VNO-NCW (the Confederation of Netherlands Industry and Employers)/MKB-Nederland (the Dutch Federation of Small and Medium-Sized Enterprises) and Stichting Reprorecht (the Dutch reproduction rights foundation) and affiliated trade associations, VOI©E and Nederlands Uitgeversbond (Dutch Publishers Association) (to be referred to below as the 'Parties'). The Parties consider it important to agree on and to lay down the following agreements and expectations:

- *The modernised Business Licence 2013 is based on the current rates, a more varied supply and trust.*

The *Business Licence 2013* has been drafted on the basis of trust and responsible business conduct.

Anticipating the current acceptance in the market the *Business Licence 2013* applies the current fees for photocopying as the basis underlying the new rates.

The use of a 'four option menu' will lead to better achievement of 'payment for actual use' than was the case with the flat-rate scheme from 2003.

The underlying basis is a scheme pursuant to which the basic use of reproduction rights will be governed by 'the basic scheme'. Parties in respect of which the basic scheme does not apply, because they never make hardcopies and/or digital copies of works that are protected by copyright, or they make much less or much more copies than covered by the basic scheme, will have separate options, which are described in detail in the attached appendices.

This Scheme will make digital forms of occasional reproduction legally available for companies.

- *Keep what is good, and improve where possible*

Existing options, such as the possibility of performing one's own research/registration and the declaration that no reproductions will be made, will continue to exist and will be improved. Stichting Reprorecht will invest in online tools for the benefit of companies' own research/registration and to provide general information with respect to the *Business Licence 2013*, and in particular the digital forms of reproduction. Stichting Reprorecht will also endeavour to ensure that documents that are protected by copyright will be more easily recognisable as such.

- *Active communication, support and taking responsibility for the philosophy of trust*

Companies in the Netherlands will be sent a notice with an invoice for a basic scheme on the basis of trust that the companies in respect of whom it applies will commence the procedure in order to achieve an individual, made to measure scheme themselves. In order to do so it is essential that the representatives from the business community, and in particular the trade associations, make an active and positive contribution to the communication. The requisite communication will be laid down, designed and launched jointly.

- *Joint monitoring and guidance*

The Parties will jointly monitor the effectiveness and will take supplementary measures if necessary. Concretely this means, as an underlying basis, a choice in favour of collective and joint monitoring rather than individual control by companies.

The Parties have committed themselves to carefully introduce the *Business Licence 2013* in the market, to jointly refine it and to develop it further where necessary.

The Monitor Group is an instrument for the parties to monitor the effectiveness and to take supplementary measures if necessary. The Monitor Group will consist of representatives from the trade associations, VNO-NCW/MBK-Nederland (already active at this time as Cluster 5 Reproduction Rights) and Stichting Reprorecht.

The Monitor Group's agenda includes: giving form to and preparing a pilot for the new working method, giving content and form to communications, developing online tools, the procedure for collecting from companies with 0-2 employees and further planning of repeat investigation and possible expansion.

- *Reproduction rights and Corporate Social Responsibility (CSR)*

Where possible branches of industry will make the responsible use of information that is protected by copyright part of the CSR monitoring programmes or certifications. For example, the Parties endorse the intention do everything possible with the goal of including 'responsible reproduction' in quality marks and guidelines. In that context responsible reproduction refers to legitimised reproduction on the one hand and reproduction without waste on the other.

Companies participate in legitimised reproduction by paying the required fee (minimally the fee in pursuance of the basic scheme). Companies reproduce without wasting by, for example, sending e-mails of reproduced published materials very specifically or by choosing to forward links to information rather than downloading and e-mailing them.

- *Specific industry agreements with respect to the working method and allocation of roles in connection with collection*

Collective collection agreements may be interesting, in particular for the trade organisations whose membership is extremely homogenous in terms of conduct and volume of reproduction. Stichting Reprorecht will take the initiative to start discussions with the trade associations for which this applies and that are interested in a possible collective scheme. Stichting Reprorecht will apply the agreements that have been made with VNO-NCW/MBK-Nederland in the context of the Negotiation Protocol as the basis for those discussions. This also applies in respect of the agreed uniform manner of indexing the rates.

- *Maintain current acceptance*

The discussions and the Veldkamp investigation were aimed primarily at companies having up to 100 employees in seven branches of industry (agriculture, forestry and fishing, construction, hotel, restaurant and catering, trade, industry, transport and other business services). The Parties involved have found that the structure of and the philosophy underlying the *Business Licence 2013*, with the option menu as the underlying basis, is very practicable for the entire business community.

Reviewed, approved and signed on, in

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**Related Appendix A:
Background and description of the *Business Licence 2013***

**Related Appendix B:
Specification of reproduction options**

Appendix A:

Background of the *Business Licence 2013*

General

The principle underlying the Dutch Copyright Act (*Auteurswet*) is that the maker's permission is required in order to copy and disseminate materials from books, magazines, newspapers and comparable publications. This applies in respect of both hardcopies and digital forms of copying and dissemination.

In Article 16h of the Copyright Act an exception is made for institutions and companies. They are permitted to make copies for internal use, without obtaining prior permission from all the makers involved, of short sections and individual articles from newspapers, magazines, books and other works that are protected by copyright, subject to the conditions that a fee is paid, via Stichting Reprorecht, to the makers of those publications, such as the authors, photographers and publishers (the 'copyright holders'). That is – briefly stated – the basis underlying the Reproduction Rights Scheme of 1985. The rationale behind that exception to the maker's exclusive right is that this practice involves occasional, non-substitutional use, in respect of which it would be impractical to request permission from all the makers involved, as long as the use is not damaging to the normal exploitation.

The business community

Since 2003 the business community pays a fee for photocopying from newspapers, books and magazines. A scheme was agreed by VNO-NCW/MBK-Nederland and Stichting Reprorecht in this respect in 2003. At the beginning there were some start-up problems, but in the meantime the scheme is functioning well. However, technological developments have partially overtaken the scheme; in the course of the years an increasing amount of information has become available digitally and the possibilities of disseminating information digitally are unlimited. As a result, companies are increasingly reproducing and disseminating information digitally.

Consultations

At the request of both the copyright holders and the market parties, at the end of 2010 discussions were commenced with respect to the inclusion of acts of digital reproduction in the extension of the Reproduction Rights Scheme. The parties held discussions on a regular basis in the period from October 2010 to October 2012. Those meetings were conducted in Cluster 5, the Reproduction Rights Cluster of the Copyright Platform of VNO-NCW/MBK-Nederland, in which a cross section of the affiliated branches of industry is represented. Feedback was given regularly in the Platform.

The consultations were used, among other things, to prepare and discuss a new investigation into reproduction within the business community. That investigation was carried out in 2011 by the Veldkamp firm. As a supplement to earlier investigations the branches of industry were viewed in a more differentiated manner and digital forms of reproduction were investigated, in addition to photocopying.

On the basis of that investigation and the experiences with the scheme from 2003, a modernised and more differentiated scheme was created in consultation.

Pursuant to the *Business Licence 2013*, which will enter into effect on 1 January 2013, in addition to photocopying – which has been arranged for since 2003 – now occasional reproduction by means of scanning, e-mailing, printing or placing on an intranet for a number of colleagues can also be done in a legal manner for companies in the Netherlands.

Notice to companies with 0-2 employees

More information/analysis of this group would be desirable and will be discussed in the Monitor Group. Notice will not be relevant in any event in the period 2013-2014. Notice to all or part of this group will, if the analysis provides reason to do so, take place at the earliest in the period 2015-2016. Of course, these companies may request a reproduction scheme at their own initiative.

Continuation of existing sector-specific agreements

Specific agreements have been made with a number of business sectors in the context of the scheme governing photocopying. An example is the 'supermarket scheme', which provides that photocopies that are made by customers are not included in the volume in respect of which a fee must be paid. Those specific agreements will remain in effect within the *Business Licence 2013*.

Description of the *Business Licence 2013*

The objective of laying down the new scheme and mutual expectations is to introduce and supervise the modernised *Business Licence 2013* in a well ordered manner.

This will be done in such a way that the current level of acceptance by users of the scheme will remain at least the same, and will be improved where possible. This scheme offers clear options and thereby calls upon the companies' own responsibility.

The *Business Licence 2013* will ensure that forms of digital reproduction will also become available in a legal manner for the business community, because those forms are used in spite of the fact that – although most companies do not know it – it is not legal to do so unless permission has been obtained to the party that holds the rights in respect of the work in question.

This includes acts such as scanning, e-mailing, printing and placing on an intranet short sections for a number of colleagues of published (digital) books, newspapers, magazines and articles on publishers' websites. The permission to make occasional reproductions in this manner will be in addition to the hardcopies, which have been arranged for since 2003.

For external dissemination via e-mail or the internet and for wide-scale and/or structural reproduction and internal dissemination, such as the provision of news internally, permission is still required from the entitled party. This also applies in respect of larger parts of a book or more than a few articles from a newspaper or magazine. But a basic scheme will now be implemented for occasional basic use of both photocopies and functionally equivalent digital reproductions and internal dissemination.

In comparison with the current scheme for photocopying, the options that already exist have been improved and expanded. This option model works using a 'four step menu', which is explained in more detail below.

Four step menu

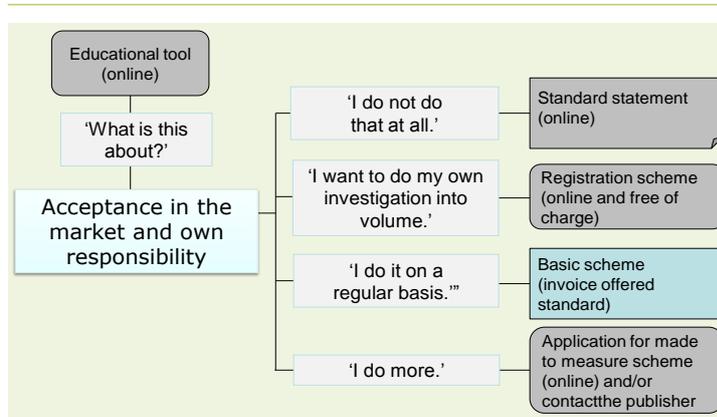


Figure 1: The structure of the Business Licence 2013

It will be standard for companies to receive an invoice for the basic scheme (light blue colour) and if necessary they can further individualise the scheme at their own initiative and have it custom made.

The four step menu uses a four option menu of use of copies (both hardcopies and digital copies).

- Option 1: I never copy works that are protected by copyright.
- Option 2: I want to conduct my own investigation into my copying volume and have a registration scheme on that basis.
- Option 3: The basic scheme, for an amount that is comparable with the current fee for photocopying.
- Option 4: I copy more than is covered by the basic scheme (Option 3); I want my own scheme.

Acceptance in the market and one's own responsibility

The current fees for photocopying will be used as the principle underlying the new *Business Licence 2013* and the new rates. As a result the digital forms of reproductions for comparable internal use will become available for companies for an amount that is in line with the fees that were paid earlier.

Companies have been used to the Reproduction Rights Scheme since 2003 and are notified by means of a combination of an invoice and a brochure. The package to be received by the company will look like the one that he is used to insofar as possible. In the brochure, the various options will be explained in a user friendly and to the point manner. That communication will be discussed with the Monitor Group in advance and will be tested by a number of companies in order to limit possible misunderstandings or misinterpretation to a minimum.

Improvement of existing options

Since 2003 it has been possible for companies to perform their own investigation into the volume of material that they reproduce. For the past few years it has been possible for small companies in particular (up to 20 FTE) to indicate via the web portal that they do not reproduce. Those possibilities will be further improved and made available free of charge (if applicable).

Option 1: Online standard statement of 'No Use'

This option applies for companies that have up to 20 FTE and do not make any use whatsoever of copying, downloading or otherwise duplicating and/or disseminating reproductions of works that are protected by copyright. They are offered the possibility of printing out a standard statement of 'No Use' via the web portal (www.reprorecht.nl). This option will be presented explicitly.

By signing that statement and sending it to Stichting Reprorecht the company can declare that he will not reproduce via photocopying, scanning, e-mailing, printing or placing information on an intranet. Stichting Reprorecht will send an e-mail each year and request the company to confirm that statement.

Option 2: Registration scheme

This option may be interesting for companies that have 20 or more FTE that do use works that are protected by copyright, but whose conduct or composition vary considerably from colleague companies in the branch of industry or business sector, as appears from the results of the Veldkamp 2011 investigation.

In that context companies can keep track, for example, of which reproductions have already been paid for directly to the publisher, for which it is not necessary to make payment to Stichting Reprorecht once again, which is known as the 'statutory opt-out scheme'.

To date the procedure provided for the company's own investigation/registration consisted of the selection of an investigation agency (via Stichting Reprorecht) and the carrying out of the investigation on the costs of the company (costs: €750). That barrier will be removed: it will be possible for the company to conduct its own registration free and online. Stichting Reprorecht will make a tool available for this purpose, which will be developed by an investigation agency that is equipped to do so. This tool will include research requirements and built-in control mechanisms that are comparable to those that were used in the prior investigations.

The registration scheme is based on the registration of acts of reproduction for a period of two weeks. The fee will be based on the result of the registration. The result of the registration will apply for four years for companies up to 20 FTE and for two years for companies with 20 FTE or more.¹ After the relevant term has expired Stichting Reprorecht will give the companies notice of the expiration, after which they will be asked to conduct a new registration or to choose a different scheme. The registration scheme will be further elaborated jointly in the Monitor Group.

Option 3: Basic scheme (underlying principle is the current scheme with a limit on the number of copies)

The basic scheme is the scheme that will be offered in a standard manner via the invoice. By payment of the fee for the basic scheme the company arranges for the reproduction rights for occasional copies.

These rights apply in respect of both hardcopy and digital reproductions. These rights are *not unlimited*: the amount of the fee for the basic scheme represents a number of pages for which a reproduction right would have to be paid. The standard number of pages that are licensed pursuant to the basic scheme is calculated by dividing the existing basic fee by €0.045.²

¹ Companies that have up to 20 FTE will be given notice every two years. Companies that have 20 FTE or more will be given notice once a year.

² The amount of €0.045 has been determined for photocopies on the basis of the 'Dutch Decree dated 27 November 2002, pertaining to the determination of the fee for reprographic reproduction and the determination of the exemption from the duty to report' (*Besluit van 27 november 2002, houdende vaststelling van de vergoeding voor reprografisch veelevoudigen en vaststelling van de vrijstelling van de opgaveplicht*).

Number of FTE (sector low) ³	Current rate	New ⁴ rate	Basic scheme volume (not unlimited)
Up to 19	€17.12	€18.00	Standard: 400 licensed pages ⁵
20 to 49	€109.00	€117.00	Standard: 2,600 licensed pages
50 to 99	€328.00	€333.00	Standard: 7,400 licensed pages
100 to 199	€657.00	€675.00	Standard: 15,000 licensed pages
200 to 499	€1,534.00	€1,575.00	Standard: 35,000 licensed pages
500 or more ⁶	Starting at €3,177.00	Starting at €3,195.00	Standard: 71,000 licensed pages

Figure 2: Basic scheme rate and standard volume for companies in sector low.

Number of FTE (sector high) ³	Current rate	New ⁴ rate	Basic scheme volume (not unlimited)
Up to 19	€17.12	€18.00	Standard: 400 licensed pages ⁵
20 to 49	€164.00	€171.00	Standard: 3,800 licensed pages
50 to 99	€493.00	€495.00	Standard: 11,000 licensed pages
100 to 199	€986.00	€990.00	Standard: 22,000 licensed pages
200 to 499	€2,300.00	€2,340.00	Standard: 52,000 licensed pages
500 or more ⁶	Starting at €4,765.00	Starting at €4,950.00	Standard: 110,000 licensed pages

Figure 3: Basic scheme rate and standard volume for companies in sector high.

Companies often fail to realise – in part due to how quickly technology is developing – what options they have in order to deal responsibly with using (and re-using) information. For example, it is not mandatory to pay a fee to forward a link to a publisher's website, but it is mandatory to pay a fee in order to first download and then e-mail information. In addition, not only is it not necessary to pay a fee in order to forward a link, that is also faster and easier. In some cases the decision to become more conscious about reproducing information in combination with the basic scheme can offer an alternative to arranging a made to measure scheme.

³ An overview of the SBI codes for the low and high sectors can be found via this [link](#).

⁴ The current photocopy rate translates/is rounded off to the standard volumes: 400 pages * €0,045 = €18.

⁵ The total amount of copies actually used within the company is calculated by multiplying the number of photocopies or digital reproductions from newspapers, magazines or books (refer to Appendix B) with the number of employees to whom the reproductions are made available. This total amount should correspond with the standard.

⁶ For companies that have more than 500 FTE there will be an individual and made to measure client service, as has been the case in the recent years. There are significant differences between a company that has 510 FTE and a company that has 15,000 FTE. A large number of those companies have made specific and divergent agreements with Stichting Reprorecht in the context of the current photocopying scheme. The rates indicated in the table apply primarily as an indication for companies that have approximately 500 FTE and a non-divergent profile in respect of reproduction.

Option 4: A 'made to measure' scheme (to be applied for from Stichting Reprorecht; the brochure contains an explanation)

Investigations have shown that for individual companies the number of reproductions may be lower, but also higher (and in some cases considerably higher) than the arrangements that can be made by means of the basic scheme. If the total volume of the number of reproductions that a company makes is higher than the number provided for pursuant to the basic licence, it is possible to arrange for a 'made to measure' scheme, through which it is possible to reproduce from a larger number of titles subject to the same limitation per title that applies in connection with the basic scheme.

In such cases a proposal can be put forward for a made to measure scheme at the initiative of the company in question or Stichting Reprorecht. On the basis of an application form (which is comparable to an application for a household effects insurance policy) Stichting Reprorecht can offer an individual, made to measure offer. The results from the Veldkamp 2011 investigation are used as a guideline in this respect, and normally the amount of the fee to be paid will be within the diversification margin (*Figure 4*) in respect of the business sector in question.

Range of investigation results per sector for size class 2 (20 to 49 FTE)

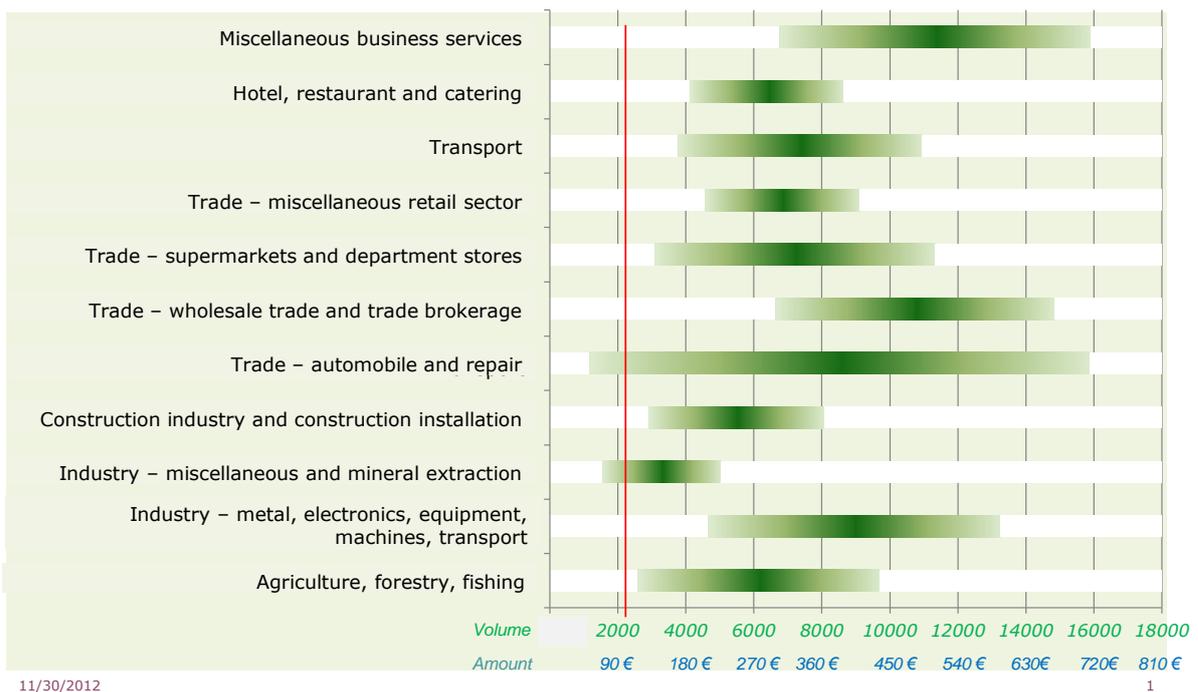


Figure 4: The fee for the basic scheme (common thread) set off against the investigation margins per sector. This example shows 11 business sectors having between 20 and 49 FTE that were investigated. A made to measure offer will be provided at the company's or Stichting Reprorecht's initiative.

In the case of multiple use of the same title within a company it could be advantageous to agree on a made to measure licence with the publisher in question. The entitled party's permission is still required for external dissemination via e-mail and for wide scale and/or structural reproduction,

such as the dissemination of news internally. That also applies in respect of larger parts of a book or more than a few articles from a newspaper or magazine.

In this context it should be noted for the sake of completeness that the prices for such re-use schemes will be determined in consultation between the company and the individual publisher(s). The € 0.045 per copy, the unit of account that forms the basis underlying the *Business Licence 2013*, does not apply in that respect.

Online educational tool

Generally speaking there is a great deal of unawareness amongst companies with respect to reproduction rights, and there is often uncertainty about what forms of reproduction fall within the scope of the exclusive right. Moreover it is difficult for many companies to estimate how much they use. The online educational tool to be developed is intended to give companies the required knowledge in a pleasant manner, without taking up too much of their time.

Appendix B

Specification of reproduction options

The new Business Licence 2013: also for digital use

We will explain below the purpose of the Reproduction Rights Scheme and what will change as from 2013.

What does the Business Licence 2013 entail?

Via the *Business Licence 2013* you will obtain a licence, with which your company can make several copies from newspapers, magazines or books. This will make it easy for you to share information with colleagues. It does not matter whether you make a photocopy (from paper on paper) or a digital copy (for example a scan or a file on an intranet), as long as it is limited to a small section or a single article. If you want to copy more than one article from the same publication or regularly make copies from the same paper or a particular magazine, it will be necessary to contact the publisher. The scheme provides you with permission to make copies on an occasional basis. Thus, it is not the intention that your copies replace a subscription.

What acts fall within the scope of this Scheme?

- Photocopies
- Printouts
- Scans
- E-mails within the company as an attachment
- Saving information digitally for one's own use (in the same way as hardcopies are filed now)
- Placing information on an intranet for several colleagues (for a maximum of 30 days)

What acts do not fall within the scope of this Scheme?

The most important condition is: do not make or disseminate more copies than are reasonably necessary within your company or organisation.⁷ The reproduction licence does not comprise the structural, organised internal distribution of newsletters and/or articles and is not intended to be used to construct an archive with more or less extensive search options.⁸

Who is permitted to make and/or receive copies?

- Any employee or auxiliary person, servant or agent, or another third party who has been engaged, is entitled to make and receive a photocopy within the company.
- Any employee or subordinate or non-subordinate auxiliary person, servant or agent and/or other third party who has been engaged is entitled to make and receive a scan or a digital copy via the company's secured network.

⁷ See Article 17 of the old Dutch Copyright Act (*oud* *Auteurswet*).

⁸ District Court of The Hague, the Netherlands, 2 March 2005 (*IER* 2005, 35).

What is permissible and what is not permissible under the reproduction right licence?

PERMISSIBLE: copying a chapter or a maximum of 5% of a book, or an article from a magazine or newspaper

NOT PERMISSIBLE: copying more than one chapter or article from one publication

PERMISSIBLE: making a copy occasionally

NOT PERMISSIBLE: structurally copying the internal news to be disseminated together (for example: a person has the job of selecting news items and copying them to keep the employees informed about relevant matters)

PERMISSIBLE: making copies for internal use

NOT PERMISSIBLE: making copies for clients or other business relations

PERMISSIBLE: making copies from various publications

NOT PERMISSIBLE: making all your copies from the same newspaper or the same magazine

PERMISSIBLE: making copies as a supplement to the subscriptions that you already have

NOT PERMISSIBLE: replacing your subscriptions with a copied version

PERMISSIBLE: making a number of copies or distributing them to a number of colleagues

NOT PERMISSIBLE: making the information available on an unnecessarily wide scale

PERMISSIBLE: making a copy from a legal publication (it is permitted to make a scan of an article on a publisher's website)

NOT PERMISSIBLE: making copies of illegal publications (an article that someone has taken over illegally may not be copied).

Practical examples:

A few times a year I see an article in the newspaper that would be interesting for my colleagues, so I make a few copies.

Am I allowed to do that with this licence?

Yes!

I read an interesting article in a professional journal. I scan it and save the scan on my computer. I also send the scan to a few colleagues.

Am I allowed to do that with this licence?

Yes!

A few times a year our company places a scan of an article on our intranet.

Am I allowed to do that with this licence?

Yes, for a maximum of 30 days.

I make a few photocopies and I give them to three colleagues during a meeting.

Am I allowed to do that with this licence?

Yes!

We regularly make copies from the same magazine.

Am I allowed to do that with this licence?

No! Discuss the options with the publisher.

One of my colleagues scans various newspapers and magazines on a weekly basis. He looks for what may be interesting for the rest of the company and sends of copies of those articles.

Am I allowed to do that with this licence?

No! Your licence is intended only for occasional use.

If I find an interesting article I always place it on our intranet, even if there are only one or two colleagues who read it.

Am I allowed to do that with this licence?

No! The group to which you are disseminating the information is unnecessarily large. It would be better if you sent the article by e-mail to the persons who would be interested in it.

We copy and disseminate newspaper cuttings, newsletters containing information collected for us and other products from cutting departments and news analysis firms.

Am I allowed to do that with this licence?

No, not with this licence. Check the agreements you have with the cutting departments and news analysis firms.

We store the copies on a central server with a convenient search system. This way we can easily use keywords (tags) to find all articles on a certain topic.

Am I allowed to do that with this licence?

No! Many publishers offer these types of services.

We have ten subscriptions to a trade journal. We can cancel a few of them because we can now make copies of the relevant articles and disseminate them.

Am I allowed to do that with this licence?

No! Your copies may not replace the subscriptions. Contact the publisher.

I found an interesting article from a publisher on the internet. I quickly made a copy of it for my colleague.

Am I allowed to do that with this licence?

Yes! You are permitted to make copies from legal publications. Be careful if you have any doubts about whether a publication is legal, for example if the article has been replaced from another website.

I see an interesting article in the newspaper about our competitors. I copy it for my colleagues.

Am I allowed to do that with this licence?

Yes! You may make a copy for use within your own circle of colleagues, but not for clients or other business relations without the publisher's permission.

I make copies of notes and internal reports that I wrote myself, which I disseminate to my colleagues.

Am I allowed to do that with this licence?

Yes! You are not required to pay a fee for your own work and internal reports and those copies fall outside the scope of your copy volume in respect of which you are required to pay a fee. The licence relates to published books, magazines, newspapers and comparable publications and publishers' websites.

We have already made agreements with a number of publishers with respect to re-use.

Am I allowed to do that with this licence?

Yes! You are not required to pay twice and do not have to include the copies that fall within the scope of that agreement in your copying volume. Choose the licence that suits your individual situation.

*I do not have to scan an article, because it is on the internet. I just send my colleagues a link.
Am I allowed to do that with this licence?*

Yes! You are permitted to disseminate a link to a legal source, such as the website of the publisher in question.

It turns out that we make more copies than we had expected! As a result our use exceeds the volume that we are permitted to copy under our licence.

Am I allowed to do that with this licence?

No! Contact Stichting Reprorecht, so that we can determine together which licence is most suitable for your company.