



Information Fair Trader Scheme

Verification of commitment to information fair trading

The National Archives

December 2007

Unlocking the potential of public sector information



<u>PART ONE: INTRODUCTION</u>	<u>3</u>
<u>PART TWO: ACTIVITIES CARRIED OUT BY THE VERIFICATION TEAM</u>	<u>7</u>
<u>PART THREE: HIGHLIGHTS AND AREAS FOR IMPROVEMENT</u>	<u>9</u>
<u>APPENDIX ONE: SUMMARY OF RECOMMENDED ACTIONS</u>	<u>17</u>
<u>APPENDIX TWO: LICENCE REVIEW</u>	<u>19</u>
<u>APPENDIX THREE: WEBSITE REVIEW</u>	<u>29</u>

Visit: 7th and 10th of December 2007
© Crown copyright 2008

PART ONE: INTRODUCTION

Information Fair Trader Scheme

1. The Information Fair Trader Scheme (IFTS) is the best practice model for public sector bodies wishing to demonstrate compliance with the Re-use of Public Sector Information Regulations 2005. IFTS ensures that re-users of public sector information can be confident that they will be treated reasonably and fairly by public sector information providers.
2. IFTS is also the mechanism by which the Controller of Her Majesty's Stationery Office (HMSO) regulates those Crown bodies with a delegation to administer their own licensing. All such bodies with a delegation must remain accredited to the Scheme. IFTS is also open to most public bodies to join voluntarily.
3. The National Archives does not have a delegation and as an archive, is exempt from the Re-use of Public Sector Information Regulations 2005.
4. Following the merger of the Office of Public Sector Information (OPSI) with The National Archives, the Controller of HMSO and the Chief Executive of The National Archives recognise that The National Archives should demonstrate a high level of commitment to IFTS principles, and as such join the scheme as a voluntary member.
5. OPSI is exercising the independent regulatory function assigned by the Controller of HMSO when verifying The National Archives. The verification looks at commercial licensing as an autonomous activity, not The National Archives as a whole.
6. To be accredited to IFTS, an organisation will:
 - make a commitment to the IFTS principles;
 - see the commitment successfully independently verified; and
 - investigate complaints that the commitment has not been met.
7. Once a Chief Executive has declared the commitment, the underlying administrative and decision-making processes of the organisation are examined to verify that they support the Information Fair Trader commitment.
8. This report shows the findings and conclusions of OPSI's IFTS verification of The National Archives.

The Business of The National Archives

9. The National Archives is a non-ministerial government department and an executive agency of the Ministry of Justice with approximately 600 staff. It brings together the Public Record Office, the Historical Manuscripts Commission, the Office of Public Sector Information and Her Majesty's Stationery Office.
10. The vision of The National Archives, as the official archive of UK government, is to lead and transform information management; guarantee the survival of today's information for tomorrow and bring history to life for everyone. The National Archives holds over 900 years of records, ranging from parchment through to digital files and archived websites.
11. 'Providing a practical framework of best practice for opening up and encouraging the re-use of PSI' is part of the mission statement for The National Archives. The National Archives has the lead across government on information management and is seen as a world leader in setting standards in improving access to information.

Licensing Activity at The National Archives

12. Much of the material that The National Archives deals with is Crown copyright for which the copyright is waived or the duration of copyright has expired. Trading in information, The National Archives relies on its right to reproduce records under the Public Records Act when entering into a contract to allow for the reproduction of the material. Where the copyright material is held by a third party, The National Archives states that permission from the copyright holder must be sought prior to re-use and provides the contact details of the copyright holder on request.
13. Income from licensing for 2006-2007 amounted to £710,000, representing 1.6% of The National Archives' overall income. The National Archives' executive agency agreement states that revenue raising activities, linked to the archives' vision, should continue to be developed. This is to generate additional income to the central funding received for limited capital and running costs expenditure.
14. Business Development is the revenue generating arm of The National Archives. Within Business Development, the licensing team are responsible for all licensing activity at The National Archives. Revenue generating activities also comprise of publishing, marketing, the image library and retail functions.

15. The National Archives' overall goal is to widen access to the information it holds. As part of this access agenda, The National Archives is undertaking an ongoing project to digitise the most popular requested records. The outcomes of this project are that trading services have been brought to full cost recovery and as many as possible of The National Archives most popular records are available online.
16. There are two methods of charging for licensing at The National Archives. In the case of reproduction fees charged by the image library, the physical copying and supply costs are contained in the statutory instrument, Public Records Office (Fees) Regulations 2005. For digitised records, royalties are based on the relevant industry benchmarks for commercial use which are set at a standard percentage rate for data supply.
17. Licensees and re-users range from stationery companies, gift merchandise companies, home ware and ceramics companies, publishers, academics, museums, exhibition centres, documentary and media companies, and web users.
18. The National Archives has developed five non-exclusive licences for re-use, dependent on the specific end use of the information. These licences are:
 - the standard non-exclusive licence;
 - the digitisation licence;
 - the online only licence (internet delivery);
 - the educational use (academic) licence; and
 - the merchandising product licence.
19. The Licensed Internet Associateship (LIA) is the licence issued for the ongoing large scale record digitisation project. This is a licence to digitise extensive datasets such as census or genealogical data. This is achieved through partnerships with private digitisation companies which incur the full cost of digitisation. The National Archives gives the private partners exclusive onsite access rights during digitisation. Following completion, the co-branded non-exclusive digitised records are linked to The National Archives website via the partnership website and can be re-used by other internet users.
20. The National Archives has separate licences for merchandising and academic licensing due to the different industry standards for these specific markets.

Overall Assessment

21. The National Archives' overall vision to maximise access to the information it holds is to be commended. The verification team also found several examples of good practice to report, for instance that The National Archives delivers a high level of customer service and satisfaction and actively seek feedback from licensees. The recommendations in this report will further raise the standards achieved in information fair trading. The primary issue highlighted by the verification was that the business language The National Archives uses needs to be revised to properly reflect its commendable access agenda and practices.
22. Based on the team's assessment, The National Archives has been accredited to IFTS and should be re-verified in 2-3 years.

PART TWO: ACTIVITIES CARRIED OUT BY THE VERIFICATION TEAM

Methodology

23. The underlying purpose of the verification was to establish whether the key principles of openness, transparency, fairness, compliance and challenge were achieved. Different types of activity, where one might expect to see these key outcomes achieved, were examined. This approach was based on a matrix model, as shown below, which takes each of the outcomes, and shows how work in each of the areas of activity demonstrates compliance.
24. The organisation is divided into a number of key business areas. Each of the areas is divided as necessary into areas of verification focus. The key business areas, and the areas of verification focus, fall under the following headings:

Business Area	Verification Focus
Service Offering	Understanding of licensing/ selling information Pricing Terms and Conditions
Access	Access to and re-use of government information Websites and equivalent
Internal Processes	Staff responsibilities and delegations Exceptions handling Costs and Cost allocation Complaints handling
Standards	Service standards
Strategic Management	Business objectives and performance indicators Management supervision of compliance
Relationship with HMSO	Commitment to IFTS
External Constraints	Competition Act 1998 Financial targets Legislation

25. When considering the findings of the verification, a view is formed as to whether the organisation was sufficiently meeting the desired outcomes of fairness, openness, transparency, compliance and challenge. The verification also takes into account whether the organisation was demonstrating a genuine commitment to strengthening the Chief Executive's commitment and making substantial progress towards that goal.

Activities Undertaken

26. The verification team:

- examined key policy and practice documentation;
- interviewed staff members within the organisation;
- reviewed licensing files;
- reviewed the website;
- reviewed the standard licence; and
- reviewed the complaints process.

These activities are described in more detail below.

Documentation review

27. The organisation provided documentation in support of the Chief Executive's commitment which was reviewed by the team, prior to the onsite verification.

People and Practices

28. In order to see how people in the organisation work and how their work is impacted by the Information Fair Trader commitment, the team interviewed a range of staff of all levels who are involved in the policy or practice of providing information.

Licence File Review

29. A sample review of customer files, covering both government and commercial re-users was carried out.

Website review

30. A review of the organisation's website was made from the viewpoint of a potential re-user of information to assess how easy it was to use. This was carried out by someone who was not part of the on-site team in order to achieve some objectivity. A more subjective review of the website also took place, based on what the verification team knew of the organisation.

Licence review

31. The terms and conditions of the standard licences were reviewed.

Complaints process

32. The customer complaints process was examined by the team. Consideration of the organisation's complaints process, both policy and practice, indicates how committed an organisation is to meeting customer needs.

Assistance provided by The National Archives

33. The team appreciate the co-operation and assistance of The National Archives licensing staff.

PART THREE: HIGHLIGHTS AND AREAS FOR IMPROVEMENT

Openness

34. The National Archives meets the principle of openness with several examples of good licensing practice. The three recommendations for this principle cover minor rewording of documentation to further increase openness.

“In principle, the Chief Executive expects that all information created by the organisation will be licensed for any use, by any customer. While there might have to be exceptions to this, whether limiting the material licensed, prohibiting uses or limiting the customer base, the Chief Executive will be reluctant to allow exceptions and will explain why they are necessary.”

Information Asset Register (IAR)

35. The National Archives holds a vast extent and scope of archived records. It has therefore developed several central registers or online catalogues cumulatively known as the National Register of Archives, which allows users to identify and request information. Users can search online or onsite and are provided with user guides and assistance from staff.
36. It is standard practice for central government and trading funds to have an Information Asset Register (IAR). However, in view of the enormity of The National Archives' information holdings, taken in consideration with the level of detail and ease of use already provided by the information navigation resources and tools, it is accepted that the IFTS criteria for openness to re-use has been met in this instance.
37. It is therefore unnecessary at this stage for The National Archives to develop an IAR as the existing catalogues are of sufficient quality.

Access to Information

38. The National Archives' Licensed Internet Associate (LIA) digitisation process is an impressive exercise in making a vast amount of material available for potential re-use. It is a cost effective scheme which recognises that resources would not be available for The National Archives to digitise this volume of material at the pace at which it is being done, without the involvement of a private sector partner. The process is tendered fairly which results in the digitisation source material being available to all customers after 6 months have elapsed. The LIA digitisation project accounts for 90% of income generated by the licensing activity of The National Archives.

Licensing exceptions

39. The National Archives has eight licensing exceptions currently listed on the website. **It is recommended that the exception to refuse licence applicants who are currently or previously have been in dispute with The National Archives, be removed.** OPSI encourage all forms of feedback and this exception is considered both restrictive and unfair.

40. **It is also recommended that the following exception be reworded to reflect the actual circumstances these describe:**

“We may refuse to grant certain applications if your request to reproduce The National Archives material falls outside our standard non-exclusive licensing terms and conditions. If we reject your application, we will explain why, try to offer another solution and work with you to revise your application if appropriate. We will refuse a licence if you apply to become a National Archives licensed Internet Associate (LIA) but fail to meet The National Archives LIA programme selection criteria. “

41. The above exception relates to the legal terms and conditions, not the proposed re-use terms and conditions. The National Archives welcomes new proposals for re-use. Also it is encouraged that the second part of this exception relating to LIAs be reviewed to become an exception in its own right.

Fairness

42. The LIA programme is an example of good practice for the principle of fairness, and The National Archives is commended for the equal treatment of its users. The National Archives meets the principle of fairness and receive no formal recommendations for fairness.

“All applicants and licensees should be treated alike for the same type of licence. The organisation should not use its market power to compete unfairly.”

LIA process

43. For the LIA programme, three contracts are awarded per year, with the total bidding process for each taking approximately four months. The dataset of records to be digitised are selected on the basis of usage. The National Archives advertises the potential datasets on the website and contacts all digitising companies that have expressed an interest in LIAs. The application form sets out objective technical criteria for selection, which are quantitatively measured to optimise

fairness. Applicants are given support in this process from The National Archives, with unsuccessful bidders receiving feedback to aid any further application.

44. The LIA application criteria includes reference to the potential partner's reputation. The LIA contract is delivered with use of The National Archives branding and access through links from The National Archives website, meaning this criteria relates to any potential reputational risk to The National Archives rather than the market status of the applicant. The 1911 census digitisation contract was awarded to Scotland Online, a relatively young company, demonstrating this has no bearing on the fair treatment of new market players.

LIA competitors

45. The National Archives has contact with the LIA partner throughout the digitisation process, when the partner has exclusive access to the on-site records, and following completion when access to the digitised records is then non-exclusive. The verification team looked into the relationship between The National Archives and the LIA digitising partners, with possible regard to unfair advantage over LIA competitors post digitisation. The team found full and fair access for online competitors of the non-exclusive LIA licensees once digitisation was complete, with no unfair commercial advantage to partners.

Transparency

46. The National Archives receives five recommendations for the principle of Transparency. This reflects the need for a move away from a commercial business language to one of re-use in order to be better aligned with this principle. The National Archives meets the criteria for transparency and these recommendations will increase this further.

“Applying for a licence, not only the process, but prices, the considerations influencing price policy, and any exceptions to the principle of openness, should be explained clearly and simply in accessible public statements. Licensees and applicants for licences should be given reasons for decisions and the reasons should be consistent with public statements and Information Fair Trader principles.”

Licence review

47. The licence review analysed licence templates used by The National Archives and appears in appendix two of this report. **It is recommended that The National Archives acts on the points raised in this licence review.**
48. The review concluded there was no discrimination between the different user groups and no restrictive terms, however some minor drafting issues were identified which could act as a barrier to openness and transparency.

In summary these are:

49. OPSI is aware that these are legal documents intended, in most cases, for a legal audience however **it is recommended that where possible there is a reduction in arcane legal phrasing.** This would both modernise and streamline the licensing documentation and align with The National Archives 'Plain English' ethos for which it has received an award for best practice.
50. This would also indirectly improve the clarity of the specific licence terms drawn attention to in the licence review. **It is recommended that the clauses highlighted are reviewed, to encourage greater readability and understanding.**
51. There were several drafting points that were highlighted by the review which once rectified would add to the transparency of the licences. These are:
- to ensure all clauses are correctly cross referenced;
 - all defined terms are correctly defined and standardised;
 - removal of any Americanised spellings; and
 - rewording of some clause headings.

Use of Commercial language

52. The language used by the licensing team does not reflect the actual access policy it champions and licensing activities it practises.
53. Currently the commercial language used by the licensing team, such as 'negotiate deals' and 'competing in the open market' gives the impression of being at odds with IFTS principles. However the verification team found this to be a business language issue rather than a business practice issue, as demonstrated by the examples of good practice, in particular for the LIA programme.

54. To mirror actual practice, **it is recommended that The National Archives use language which actually reflects the work being done.** This should be adopted at every level of the organisation to reflect The National Archives' status as a newly accredited IFTS member.

Timing of licensing process

55. The National Archives publishes its service standards on the website and delivers a measurable high level of customer service and satisfaction. Continuing this good practice, **it is recommended that The National Archives adopt Key Performance Indicators (KPIs) for the licensing process.** While the licensing team already provide a timetable of the process for potential LIA applicants, adopting KPIs would further increase the transparency of the process for users and demonstrate the high level of service being offered.

Image Library

56. The Image library licenses the use of images held by the National Archives for use in the media industry, covering broadcasting, print and digital channels. Licensing terms and prices vary for the image library depending on the size of the image requested; numbers of images ordered and intended global audience.

57. OPSI would encourage The National Archives to be more transparent about this process and the pricing methods used by the image library, particularly with multiple image requests. This information is not currently on the website although a standardised method is used based on industry benchmarks.

58. A full price list for these bulk orders is currently being finalised and is intended to be incorporated into the image library web-page as an interactive tool for re-users, to calculate their individual prices online. This proposal would greatly increase the transparency of the pricing methods and the anticipated user-centric format will speed up the process for both parties.

59. **It is recommended that The National Archives incorporate the intended price list calculation tool into the image library web page with an accompanying statement to the effect that users of the same material for the same purposes will be treated in the same way.** This will reflect the standardised and quantitative methods that are in use within the organisation, but not publicly advertised.

Financial model

60. OPSI are aware that The National Archives is currently implementing a major change to the organisational financial regime, from a traditional charging model to a notional cross-charging model. While this will lead to greater financial transparency and introduce a 'real time' financial picture, there is a lack of clarity in the current model. OPSI will monitor this at re-verification in 2010-11.

Website review

61. OPSI found The National Archives website to be implicitly compliant with IFTS, but would like to see more explicit references to IFTS principles and practices. This would also promote the status of newly accredited IFTS member to its users. The website review can be found in appendix three of this report.

62. **It is recommended that the licensing web page is revised to include reference to all IFTS principles and the Chief Executive's commitment to the scheme.** The licensing team are encouraged to regularly update and monitor the website.

Compliance

63. The National Archives has met the principle of compliance with no major barriers to IFTS accreditation. The National Archives receives two recommendations for this principle.

"Chief Executives agree to test their organisations by an independent verification to find out whether they have the infrastructure to deliver their commitments to openness, transparency and fairness. The verification tests whether the administrative processes are actually followed in practice."

Training

64. It was noted on the verification that there is no formal licensing training for the licensing team. Tying in with this, there is also a lack of formal staff guidance material on licensing and other commercial policy issues. **It is recommended that The National Archives develop formal licensing staff training materials, internal guidance and policy documents.** This will ensure a standardised approach and that all staff are fully aware of their IFTS obligations. In particular, there is a need for formal staff guidance on the Competition Act in line with the IFTS commitment. OPSI would also

encourage greater incorporation of OPSI guidance on re-use of Public Sector Information to maximise this.

65. It is recommended that IFTS principles are incorporated into the licensing team business plan, highlighting that meeting the IFTS commitment is a strategic objective. This will ensure the procedures to support the delivery of ongoing responsibilities under IFTS are in place. To strengthen this, OPSI would also like to see the personal objectives of licensing staff to include reference to open, fair and transparent working practice.

Licensing file review

66. The licensing file review investigated The National Archives' electronic licensing records and found no evidence contrary to IFTS principles. The National Archives has a high standard of information management, with a complex but easily navigable system. However, some examples of out of date licences were discovered during the verification, which could be removed, those being:

- 2002 Image library 'licence agreement';
- 2002 CD ROM 'agreement';
- Public Record Office 'framework agreement for the provision of contract services' (photographic licence);
- Untitled non-exclusive licence for image library products (12 pages);
- internal price guide of image library for marketing purposes.

Challenge

67. The National Archives meets the principle of challenge with one recommendation to further improve the robust complaints process already in place.

“The organisation has a complaints process empowered to reconsider incorrect licensing decisions. OPSI can investigate the organisation's licensing decisions if they appear to be wrong.”

Licensing complaints

68. The licensing complaints process is a channel of The National Archives' overall complaints procedure. There have been no formal complaints raised for The National Archives licensing activity to date.

69. As part of the ongoing IFTS responsibilities The National Archives should ensure that users are aware that there is a separate

complaints route under IFTS. **It is recommended that The National Archives explain clearly and unambiguously that complainants should complain to The National Archives licensing team in the first instance, after which an independent complaints route is available under IFTS.**

70. The National Archives actively seeks feedback from its licensees to review and develop the licensing process as part of an ongoing consultation programme. This is commended as an example of good practice. OPSI would also encourage the National Archives to seek feedback from licensees on maximising the re-use of the information licensed to add to the mutual benefit of this existing initiative.

APPENDIX ONE: SUMMARY OF RECOMMENDED ACTIONS

This is a summary of the ten recommended action to:

- remedy the weakness identified; and,
- strengthen the commitment to Information Fair Trading.

Principle	Ref	Recommendation	Priority
Openness	39	Remove the exception to refuse licence applicants who are currently or previously have been in dispute with The National Archives	High
	40	Reword the exception that applications may be refused if they fall outside The National Archives standard terms and conditions, in order to reflect the actual circumstances these describe	High
	46	Act on the points raised in the licence review in order to bring the documents further in line with IFTS and the commitment to the scheme	Med
Transparency	53	Adopt the language of re-use to reflect the culture of access and reuse championed	Med
	54	Adopt Key Performance Indicators (KPIs) for the licensing process	Med
	55	Incorporate the intended price list calculation tool into the image library web page with an accompanying statement to the effect that users of the same material for the same purposes will be treated in the same way	High
	58	Revise the licensing web page to include reference to all IFTS principles including the Chief Executive's commitment to the scheme	High
Compliance	59	Develop formal licensing staff training materials, internal guidance and policy documents, particularly for the Competition Act	Med
	60	Incorporate IFTS principle into the licensing team business plan, highlighting that meeting the IFTS commitment is a strategic objective	Med

Challenge	62	Explain clearly and unambiguously that the users should complain to The National Archives licensing team in the first instance, after which an independent complaints route is available under IFTS	High
-----------	----	--	-------------

APPENDIX TWO: LICENCE REVIEW

THE NATIONAL ARCHIVES STANDARD LICENCE REVIEW 1

Date of Review: 14th January 2008

Title: Digitisation & Licence Agreement (Boilerplate LIA Distribution License Feb06.clean doc)

Evaluation Criteria

1. Clarity of licence terms

Check for clarity of language, jargon, legalistic language, plain English

a) Some of the licence terms are in plain English while others are written in more legalistic/formal language. The licence terms could be simplified by removing some of the superfluous wording. For example, in Clause 1 (Definitions) the use of the words “more particularly” in the definition of “the Licensed Material” could be deleted. The definitions of “Associate”, “Group”, “Holding Company” and Subsidiary are also legalistic and could lead to confusion where they feature in the licence terms. Other wording which could be deleted includes “hereby” in the second line of clause 2.1; “thereof” in 2.4; and “hereto” in 5.1.1.

b) The Recital would be enhanced by including background on the role and the responsibilities of The National Archives/The Public Record Office/The Historic Manuscripts Commission and how they relate to the Material which is covered by the licence. Clause 2.4 specifically prohibits the Publisher from using those names, and any related logos, except in context of the acknowledgement set out on Schedule 1.

c) The licence document covers two distinct activities and this could be made clearer in the arrangement of the clauses.

1) It gives the Publisher the right to create a digital version of records and documents held at The National Archives (the Material). Copies of some records/documents will be supplied to the Publisher and will be subject to the payment of an appropriate fee. Where The National Archives is not able to supply copies of the records/documents the licence sets out the arrangements for making available the actual records/documents to an Approved Location for digitisation. Clause 4 has some alternative sub-clauses to cover this arrangement.

2) It also gives the Publisher the right to make the digitised version of records/documents (Digitised Licensed Material) available to users as online services via the Internet.

d) The wordiness of Clause 1 (Definitions) could be reduced by deleting “the” from the start of the definitions. One possible way of improving the layout and readability would be for the words/expressions to be set out on the left side of the page and each of the meanings inset across the page as hanging paragraphs.

2. Comprehensiveness of licence terms

Are there any significant omissions? Does the licence contain terms that you would not expect to find in a licence?

a) There are definitions for “Rights”, “Intellectual Property Rights” and “Licensed Material” but not one for Crown copyright. This would need to link to those other definitions to ensure clarity. Schedule 1 (Acknowledgement) requires the Publisher to include an acknowledgement of Crown copyright, meaning this term must be defined.

b) Clause 2 is headed “Grant of Rights; Reversion of Rights” however the sub-clauses under this heading do not cover the reversion of rights! Sub-clause 2.4 relates to the assignment of the Intellectual Property Rights in the Digital version of the records from the Publisher to The National Archives/Crown. This needs to be clarified.

c) Clause 7 is headed “Confidential Information”, this term is used in the sub-clauses under this heading but it is not included among the definitions. It is not clear what is regarded as Confidential Information. The abbreviation FOIA is used in sub-clause 7.2 rather than the full title Freedom of Information Act. It is not clear what the link is to clause 13. The Act is also mentioned in sub-clause 4.5. Any defined or abbreviated terms must be correctly described.

3. Fairness

Does the licence contain terms that are unfair or unnecessarily discriminate between different user groups?

a) The licence does not include terms that seem to discriminate between different user groups.

b) Sub-clause 5.2 sets out the requirements that should be set for the users of the Digitised Licensed Material. It is not clear what is considered to be “research, private study and education”, for example the meaning of a “professional research result”. Schedule 1 includes wording for an acknowledgement that relates to the provisions of Clause 5.2.

c) It is not clear how The National Archives decide the level of the advance at 6.11. This could be clearer that a consistent approach is adopted by The National Archives staff when setting the level of the advance payment.

d) The National Archives sends out invoices for the fees that relate to the provision of copies of the Licensed Material. There is a requirement to pay the invoice within 15 business days (Sub-clause 4.4). The National Archives does seem to issue invoices for the royalties or the advance (Clause 6) but under clause 9.1.2 the Licensor is able to terminate “if the Publisher shall fail to pay any sum due to the Licensor within 30 Business Days of the due date”. This could be made explicit.

4. Consistency

Does the licence contain any terms which are inconsistent and contradictory?

a) Some of the sub-clauses contain words and expressions which have initial capitals and are therefore significant but have not been included in Clause 1 (Definitions). These include: “Authorised Contractor” (sub-clause 8.3.3) and Defaults (sub-clause 8.5). The abbreviation The National Archives is used in sub-clause 4.5 rather than the Licensor. Terminology should be standardised.

b) Sub-clause 12.1 refers to clauses 12.2 and 12.3; they are not included in the agreement. Sub-clause 10.1.1 refers to a clause 2.9, and there appears to be no clause 2.9. This should be rectified for consistency.

c) In relation to sub-clause 12.1, The National Archives should not and cannot assign any rights belonging to the Crown and this should be made clear.

d) Sub-clauses 4.4 and 4.5 refer to “the Statutory Instrument rate prevailing at the time”. There are hundreds of different Statutory Instruments in force. The licence should make clear that the fees are calculated with reference to the current version of the Public Record Office (Fees) Regulations 2005.

5. Practical Arrangements

Is it clear what the process is for making payments, amending terms for example?

- a) There are three types of payment due under this licence:
- 1) for the supply of copies of the documents (sub-clause 4.4)
 - 2) a royalty (6.1) and,
 - 3) an advance on royalties (6.11)

For clarity The National Archives could consider putting all the payment details in one clause.

- b) It is not made clear in the licence terms if the Publisher can deduct the advance from the first royalty payment.
- c) Clause 10 covers Effect of Termination. Sub-clause 10.3 seems to allow the Licence Material to be made available to the End-Users for “a maximum period of twelve months” after termination. This should also be qualified for instances when the Publisher is declared insolvent or has committed a material breach.

6. Restrictiveness of terms

Are any of the terms unnecessarily restrictive?

- a) The payment of an advance could be seen as being restrictive if the level of the advance is set at too high a rate. Including a reference to the fair pricing method would clarify this.

7. Additional Comments

- a) Clause 8 sets out the Warranties and Limitation of Liability. The sub-clauses which set out the warranties and the limitation of liability are extensive and written in legalistic language. Many of the sub-clauses cover limitation of liability and relate to the making of the digitised versions of the Licensed Material. We would make the following general comments:

1. The National Archives staff do need to make sure that The National Archives does have right to license all the rights set out in each individual licence agreement.
2. If The National Archives staff that are making licence agreements have any doubts about the copyright status of any the material to be covered they should seek the views of the Information Policy consultant copyright expert at The National Archives.
3. The wording of sub-clause 8.3.5 should be reviewed. It appears to be saying that the Publisher should not include any “obscene, illegal, blasphemous or defamatory” material in any of its online services but that The National Archives are allowing the Publisher the right to scan any obscene, illegal, blasphemous or defamatory material which is included in the Licensed Material and can make it available to others via the online services. This needs to be unambiguous.

THE NATIONAL ARCHIVES STANDARD LICENCE REVIEW 2

Date of Review: 14th January 2008

Title: Licence Agreement (online.onlytemplate.doc)

Note: The Licence Agreement follows the format of the Digitisation & Licence (D & L) Agreement which has been subject to separate review (review 1). This version contains most of the same clauses as the D & L Agreement but some of the wording is different. This review will not comment on points that have already been made in the review of the D & L Agreement, which can also be applied here.

Evaluation Criteria

1. Clarity of licence terms

Check for clarity of language, jargon, legalistic language, plain English

- a) The wording of (A) in the Recital is different, in that it refers to "Licensed Material".
- b) The rights that are being granted need to be clarified (see comments at 4 (f) below).

2. Comprehensiveness of licence terms

Are there any significant omissions? Does the licence contain terms that you would not expect to find in a licence?

- a) See comments at 2 (a) and 2 (b) of the D & L Agreement (review 1). There is a significant difference in the wording of sub-clause 2.4 of this licence compared with that in 2.5 of the D&L Agreement. In this licence agreement the Intellectual Property Rights (IPR) in the Digitised Licensed Material (not defined) vest in The National Archives (the Licensor) who will assign them to the Publisher. This is the opposite of what happens under the D & L Agreement where the Publisher is assigning the IPR to The National Archives/Crown. That seems the correct approach.
- b) Clause 7 of this licence agreement only contains two sub-clauses unlike the D & L Agreement which includes 9 main sub-clauses which include their own additional sub-clauses. The wording here is quite succinct compared with the D & L licence agreement which is very legalistic and goes into great detail about the confidential information. Sub-clause 7.2 refers to The National Archives rather than to the Licensor and should be standardised.

3. Fairness

Does the licence contain terms that are unfair or unnecessarily discriminate between different user groups?

a) This licence contains a sub-clause 2.2 which is not included in the D & L Agreement. The National Archives have the right to terminate the licence agreement if the Publisher does not make the Online Service available within 6 months of a request from The National Archives to do so.

b) Both licence agreements are granted for an initial period of 10 years. This agreement differs from the D & L Agreement in that it can be extended for further periods of 10 years, while the D & L Agreement is only extendable for periods of 5 years. It is not clear why the periods for extension are different, which could be clarified.

4. Consistency

Does the licence contain any terms which are inconsistent and contradictory?

a) The definition of "Account Period" in Clause 1 (Definitions) ends with the words "commencing with the period ending 30 June 2003" whilst the D & L Agreement ends "commencing with the first such period or part period ending after the Effective Date". The 2003 date needs to be amended.

b) This licence has a different definition for "Associate".

c) This licence includes a definition for "Companies Act" which is not included in the other version. The definitions for "Group" and "Holding Company" are not included. Again any significant terms need to be defined.

d) Sub-clause 2.4 and 2.5 refer to "Digitised Licensed Material" but there is no definition for this and the term is not used in the rest of licence, this should be defined or explained.

e) The definitions for "the Pay-Per-View Service" and the Publisher's Online Service" and "the Subscription Services" contain different wording.

f) The definition of Rights is different here and contains a reference to sub-clause 12.2 (Clause 12 General) about sub-licensing. The other licence includes a separate Clause 12 Assignment & Sublicensing but is not cross referred to the Definitions. There rights in the Definition are set out at (i) to (iii) and at (i) to (vi).

g) Sub-clause 2.8 of this licence differs from sub-clause of 2.4 of the D & L Agreement in that it does not refer to "the Historic Manuscripts Commission".

h) Sub-clause 6.7 includes a reference to “the Licensee”, this term is not used in the licence, for consistency it should be “the Publisher”. Sub-clause 10.1.2 includes the term “the Publisher’s Products” which is not included among the agreed definitions at Clause 1.

5. Practical Arrangements

Is it clear what the process is for making payments, amending terms for example?

a) Sub-clause 4.1 makes clear that the Publisher has to purchase copies of the Licensed Material from The National Archives and that the Publisher will not be given any access to the original documents and records. As commented in the review of the D & L Agreement the document needs to refer to the Public Record Office (Fees) Regulations rather than “the appropriate Statutory Instrument”. Statutory Instrument could be included as a defined term in the definitions clause.

b) Three types of payment are also required under this licence agreement: (supply of copies (sub-clause 4.5/4.6), royalty (sub-clause 6.1) and advance (sub-clause 6.10). Sub-clause 6.1 (ii) of this licence does not set how the method of calculating the royalty for the Subscription Service as clearly as the D & L Agreement.

c) Sub-clause 5.1.4 requires the Publisher to inform The National Archives when it intends to launch the Online Service so that The National Archives can approve review/approve the presentation. There is no timescale for this. The wording of sub-clause 5.1.4 of the D & L Agreement is more expansive on this and states that approval shall be “deemed to have been given” if The National Archives does not respond “within 5 working days”. Similar wording could be used in this licence agreement.

6. Restrictiveness of terms

Are any of the terms unnecessarily restrictive?

a) This agreement also requires payment of an advance. Again this could be seen as restrictive if the rate is set too high and this could be expanded.

7. Additional Comments

a) Unlike the D & L Agreement this licence does not contain an extensive range of sub-clauses under the Warranties and Limitation of Liability clause heading. This licence agreement only has a Clause 7 headed “The Licensor’s Warranty” as the Publisher is not being given access to the actual records/documents for scanning. The National Archives staff should ensure that The National Archives has the right to license all the material and they should check with the Information Policy consultant copyright expert for any doubts about the copyright status of the material being licensed.

THE NATIONAL ARCHIVES STANDARD LICENCE REVIEW 3

Date of Review: 15th January 2008

Title: Shortform image license.boilerplate.doc

Note. This licence is set out in a different format to the other licence agreements, as a letter with an extensive range of terms and conditions.

Evaluation Criteria

1. Clarity of licence terms

Check for clarity of language, jargon, legalistic language, plain English

a) This document would be improved by setting it out as a licence agreement rather than as a letter. Setting out what are the definitions and what are the terms and conditions, as numbered clauses, would provide greater clarity and a more logical structure. The numbered clauses could then easily be referred to. Having the date of the licence agreement at the top of the page and a section setting out who are the parties to the Agreement and including some appropriate background information about each of the parties would also provide clarity.

b) The wording seems to have been put together from a number of different sources and as a result some of it is in plain English and some in more legalistic language, which lacks clarity and cohesion.

2. Comprehensiveness of licence terms

Are there any significant omissions? Does the licence contain terms that you would not expect to find in a licence?

a) There do not seem to be any significant omissions but given the way the document is set out it is not easy to see them.

b) Paragraph (b) of the Approvals section takes the form of a warranty. There is no link to the actual Warranties section. Section (c) there relates to warranty made by the Licensee.

3. Fairness

Does the licence contain terms that are unfair or unnecessarily discriminate between different user groups?

a) The licence is granted for a period of 2 years (Term section) and can be “renewed for a further two (2) periods of twelve (12) months, subject to the prior written approval of The National Archives”. The other The National Archives licences reviewed are granted for longer periods and can also be extended for longer periods and such reasons could be explained.

b) The Licensee is required to pay a royalty to The National Archives. Part 3 of Schedule 1 to the licence does not state what the royalty rate is. Whether The National Archives publish a standard royalty rate for this type of licence or whether the royalty is decided on a case by case other basis is not clear. The other licences state a royalty rate of 7%.

c) Section (b) of the Samples & Stock section allows The National Archives to request that the Licensee supplies copies of the Product to The National Archives at the “best trade discount available” for “sale in its retail outlets”. The wording needs to make clear that the Licensee does not have to pay a royalty to The National Archives on the products sold to The National Archives and that The National Archives apply this condition consistently.

4. Consistency

Does the licence contain any terms which are inconsistent and contradictory?

a) Some sections of this document use the American spelling of “License” rather than using the English spelling for the noun “Licence”.

b) Some sections of the licence refer to The National Archives and others to the Licensor. There is also reference to Licensee in the Approvals section but in the rest of the Agreement [] is used. This would suggest that the name of the licensee is inserted on an actual licence and needs to be standardised.

c) The term “the Property” is used with an initial capital in the section headed “3rd Party Proceedings” but is not defined or used in other sections of the document. “Third” should be used rather than “3rd”.

d) The Acknowledgement section requires the Licensee to include the acknowledgement specified at clause 2 on “the Website”, there does not seem to be a requirement to include an acknowledgement on the Product, any packaging or accompanying documentation, which could be inconsistent. This should also be made unambiguous for Crown copyright material.

5. Practical Arrangements

Is it clear what the process is for making payments, amending terms for example?

a) The licence is for the reproduction of material selected from The National Archives files as part of a Product. It seems applicable for the use of an image on, for example, a poster or some other form of gift item but it is not clear from this boiler plate licence. The product could be more explicitly defined.

b) Before manufacturing the Product the Licensee needs to obtain written approval from The National Archives (Approvals section). It is not made clear where in The National Archives the samples should be sent and what would be the turn around time for getting The National Archives approval/rejection of samples, advertising etc. This should be stated to demonstrate fair treatment of users.

c) The wording of the Termination section could be clarified. It gives The National Archives the right to terminate the licence but there is no provision in this section for the Licensee to terminate the licence. It does not make clear what the arrangements are for the payment of royalties up until the date of the termination of the licence. In addition it is not clear what will happen to the remaining stock of the Product. The section refers to the delivery of “all copies of the Material to The National Archives free of charge and provide a certificate of erasure identifying the Digitised Material in a form satisfactory to The National Archives.” The term Digitised Material is not defined or used anywhere else in the licence.

d) The wording of the Assignment section should be clarified. It is not as clear as that used in the other licence agreements.

6. Restrictiveness of terms

Are any of the terms unnecessarily restrictive?

a) The Approvals clause indicates that The National Archives shall be “entitled to issue reasonable directions (having regard to the proposed selling price)”. This could be seen as being restrictive and there could be disagreement as to what are “reasonable directions”. This could be clarified.

b) The licence includes a section headed “Restrictions”. These seem reasonable but it would be better to refer to them as Licensee obligations rather than restrictions.

APPENDIX THREE: WEBSITE REVIEW

Website address: www.nationalarchives.gov.uk

Date of review: 19th November 2007

Score: 192

The following questions were considered:

- 1.1 Does the website have an Information Asset Register? **No.**
However, does offer users a register of National Archives documents (the National Register of Archives) at <http://www.nationalarchives.gov.uk/nra/default.asp>.
- 1.2 If yes, how many clicks is it from the homepage? **NRA is 1 click.**
- 1.3 How long did it take to find? **<1 minute**
- 1.4 If there is no IAR, is there other guidance on what information is available?
Some other search facilities on offer on front page.
- 2.1 Does the PSB use standard licences? **Yes**
www.nationalarchives.gov.uk/business/licensing.htm
- 2.2 Are these published in full on the website? **No, but application forms viewable.**
- 2.3 If yes, how many clicks are they from the homepage? **2 (via A-Z index)**
- 2.4 How long does it take to find? **Less than 1 minute**
- 2.5 How many standard licences are there? **4**
- 2.6 Is there an explanation of what different licences are for and is it clearly understood?
Yes, although the sections on the 'Licensing' page of the website are short and there are no copies of the overall terms and conditions of the licences.
- 3.1 Is there any charge made for licences?
Yes, although website offers only some estimates as to the value of any licensing arrangements
- 3.2 Is there an explanation of the charges? **Yes, albeit brief**

- 3.3 Is there an explanation of how charges are drawn up? **Yes, although again generalised.**
- 4.1 Is there an IFTS commitment on the website? **Not applicable; website does refer to IFTS scheme, but no direct explicit pledge for The National Archives to join.**
- 4.2 How many clicks is it from the homepage? **2**
- 4.3 How long does it take to find? **Less than 1 minute**
<http://www.nationalarchives.gov.uk/services/opsi.htm>.
- 5.1 Is there clear and precise information on how to apply for a re-use licence? **Yes, although not referred to as 're-use licences'**
www.nationalarchives.gov.uk/business/licensing.htm.
- 5.2 Are there a variety of methods for applying for licences? **No, one standard email address**
- 5.3 Is it possible to apply online for a licence? **Yes**
www.nationalarchives.gov.uk/business/internet.htm.
- 5.4 Does it specify a timescale to grant licences? **No**
- 5.5 If yes, what is that timescale (in working days)? **Not applicable**
- 6.1 Does the PSB have a procedure for complaints regarding licensing decisions? **Yes:** www.nationalarchives.gov.uk/business/rights.htm.
- 6.2 How many clicks is it from the homepage? **3**
- 6.3 How long does it take to find? **1 – 2 minutes**
- 6.4 Does it mention that if the complainant is unhappy they can refer to OPSI or APPSI? **Yes**
<http://www.nationalarchives.gov.uk/business/rights.htm>.
- 7.1 Does the website explain what information is not available? **Yes**
- 7.2 If Yes, does it explain why? **Yes (e.g. national security, confidential legal proceedings)**
- 7.3 How many items are listed? **3**
Exceptions listed as genres rather than specific items.
- 8.1 Does the website outline any exceptions to normal licensing policy? **Yes**
www.nationalarchives.gov.uk/business/rights.htm.

- 8.2 If Yes, does it explain why that exception has been made? **Yes**
However, some of these contentious. In particular, point 3 paragraphs 1
(...the dispute was not resolved to our satisfaction) seems to be somewhat at odds with the commitment to accept and investigate complaints from potential partners.
- 8.3 How many exceptions are there? **7**
A somewhat high figure, although some areas may be understandable given the nature and variety of material possessed by The National Archives.
- 9.1 Does the website have a Crown Copyright notice? **Yes, although no overall acknowledgment of Crown Copyright, individual documents marked up accordingly**
- 9.2 Is it linked to from every page? **No**
- 9.3 How many clicks is it from the homepage? **N/A**
- 9.4 How long does it take to find? **N/A**
- 9.5 Is OPSI/HMSO mentioned, with contact details? **Not in this context.**
- 10.1 Does the website have an electronic search facility? **Yes**
- 10.2 If yes, how many clicks is it from the homepage? **0**
- 10.3 How long did it take to find? **<1 minute**
Present on homepage and all subsequent pages. Very easy to use, proved very useful tool. Also has an A-Z index which proved highly effective
- 11.1 Is the material available by electronic means? **Yes - some**
- 11.2 Is it possible to download direct from the website? **Yes – some**
- 11.3 If data is not available electronically, is there an explanation of how to obtain it? **Yes, albeit through one email address**
- 11.4 If data is sent via email, is there a specified timescale for delivery? **N/A**
- 11.5 If yes, what is the timescale (In working days)? **N/A**
Fair range of documents available on website. Also mentions email address for some further questions, although no timescales available.
- 12.1 Does the PSB outline its responsibilities under IFTS on their website? **Not directly, despite some acknowledgement of IFTS' existence.**

- 12.2 Does the website explain what IFTS is aiming to achieve? **Yes – has link to OPSI site.**
- 12.3 Are the benefits of IFTS explained? **Not directly, only in generalised context**
[\(<http://www.nationalarchives.gov.uk/services/opsi.htm>\)](http://www.nationalarchives.gov.uk/services/opsi.htm)
- 12.4 Is the PSB using IFTS logos on their website and actively mentioning they are a member of the scheme? **Not yet members, but IFTS is addressed on website.**
- 13.1 Does the PSB outline its policy towards its trading of PSI? **Yes, albeit partially**
www.nationalarchives.gov.uk/business/licensing.htm.
- 13.2 Does the PSB explain how it arrives at decisions? **Not explicitly, barring the section on licensing exemptions**
- 13.3 Does the website have an explanation of what re-use is? **Not directly**
- 13.4 Does the website explain what Crown Copyright is? **No**
- 13.5 Does the website explain why licences are sometimes needed to re-use information? **No**
- 13.6 Does the website explain the difference between FOI and re-use? **Yes**
Separate page on the Freedom of Information Act, clear on issues here.
- 13.7 Does the website explain what a trading fund and delegated authority is? **No**

Most areas of this website very well designed and clear, easy for the user to access a wide range of information with some efficiency. Also, the search facilities make it relatively straightforward to get hold of all relevant parts of the site. Much to be credited here, especially as this organisation has yet to become a member of the Information Fair Trader Scheme.

However, some aspects of the website could do with some more information or clearer signalling of key issues (e.g. Crown copyright). These may well receive some attention once accreditation for the IFTS scheme has been granted, given the commitments implicit in such an agreement. Should these clarifications and further explanations be given on the website, then it has the potential to meet all requirements of the scheme with some comfort.

