Licensing: Agency arrangements

The following guideline is relevant to people or organisations (Agents) that will be engaged by one or more licensees of the National Digital Learning Resource Network (previously The Le@rning Federation) to undertake activities on their behalf, including the provision of products or services.

Under the terms of separate licence agreements, digital curriculum resources are made available to the Australian Government, State and Territory Departments of Education, Catholic Education Offices, Associations of Independent Schools and independent schools themselves.

The relevant agreements for non-commercial educational use of the resources are:

- Licences A and E to state and territory authorities responsible for government schools
- Licence D to non-government education bodies responsible for the administration of one or more schools, tertiary institutions and professional teacher associations.

Certain characteristic rights are conferred under these licences and the exercise of some of these rights may involve a separate legal entity (a third party). The possible rights under a licence may include any combination of:

- user rights: the right to play, run, execute, display, etc, for the licensee's internal purposes or to deliver a service (for example, education) to a third party (for example, a student);
- development rights: the right to adapt the content in various ways; and
- supply rights: the right to distribute or communicate the content to third parties (in original form or as adapted) as a product (note government authorities are permitted to commercialise certain types of derivative under Licence B).

One of the most common roles that we see Agents performing is in relation to the hosting and distribution of resources. While Education Services Australia is responsible for managing the National Digital Learning Resource Network, it is primarily the responsibility of peak education authorities to download content from Education Services Australia’s repository and to provide access to schools via their own technical infrastructure.

What occurs when a licensee engages an Agent?

A licensee (for example, a Catholic Education Commission) may choose to engage an Agent to perform one or more services in connection with a licence. In such a case, the agent would be construed as an ‘Agent’ of the licensee and would access content and exercise the relevant licence rights as if they were the licensee.

It is important to understand that, for the purposes of the exercise of rights as described above, the agent is not a third party, and accordingly not a sublicensee. They are an ‘Agent’ of the licensee.

What is an Agent?

An Agent is defined in the licence agreements as a person or entity acting for and on behalf of the licensee. The criteria that may assist in determining that a person is acting as ‘Agent’ on behalf of a licensee include:

- the activities of the Agent are undertaken to carry out the ordinary activities of the licensee under the licence;
- the content is made available to the Agent by the licensee;
- the activities are carried out under the direction or control of the licensee;
- the licensee takes responsibility for ensuring that the Agent acts within the limits of the licence;
- the content is to be returned or dealt with as directed by the licensee on completion of the activities.
What are the rights and responsibilities of an Agent?

As they act on behalf of licensees, Agents must abide by those terms identified in the licence agreement/s relevant to the tasks they have been engaged to perform. So, for example, if an Agent is engaged to supply or distribute content to a particular licensee, then it is only required to comply with those licence terms relevant to such activities. Naturally this would not permit the Agent to do whatever it likes under a licensee’s licence. It could only do what the licensee authorises it to do and, moreover, the agent would not be permitted to do anything that would, if done by the licensee, constitute a breach of the licence agreement.

With these considerations in mind, licensees should provide a copy of their licence(s) to their Agent to ensure that they have understood the relevant obligations they have under the licence.

What are the formalities for appointing an Agent?

Ideally, the agreement between a licensee and Agent should state explicitly:

- that the Agent is to perform a service or services as 'Agent' of the licensee for the purposes of a stated licence;
- the nature of the service or services for which the Agent has been engaged;
- any other terms of the agency.

The form of the agency is a matter for the relevant licensee and agent to determine, and will vary according to the circumstances, the needs of the parties and the services required. Possible arrangements include:

- a licensee might enter into an agreement with an Agent to distribute content to that licensee or bodies administered by that licensee;
- a licensee might enter into an agreement with an Agent to establish a central hub for deploying content to the licensee or bodies administered by that licensee;
- a licensee may enter into an agreement with an Agent to assist in development of the content for use in their schools;
- two or more licensees may wish to collaborate to establish a shared implementation and may jointly enter into an agreement with an Agent to deploy content.

Does Education Services Australia need to be advised once an Agent is appointed?

Yes. Licensees are asked to notify Education Services Australia when they appoint a person or entity as their Agent. A form for notifying Education Services Australia is included on page 4 of this document.

What happens when an Agent is engaged to obtain content from Education Services Australia on a licensee’s behalf?

When an Agent is engaged to obtain content from Education Services Australia on behalf of one or more licensees and / or to distribute the content to the licensee’s schools, the Agent will be required to enter into an agreement with Education Services Australia. This agreement will grant them the right to access the content only for the purpose of distributing that content to the relevant licensee/s. The relationship between each party is described in the diagram overpage.

For additional information please contact Copyright Administration and Permissions, Education Services Australia at permissions@esa.edu.au
**Legal relationships between parties**

**TLF Licence Agreements A, D & E**

*Licences A & E are for the government school system in a State or Territory and New Zealand.*

*Licence D is for non-government school bodies responsible for the administration of one or more non-government schools in Australia or New Zealand. Universities and teacher professional associations are also offered this licence.*

**TLF Agreement to Supply Content**

This agreement is only issued to some Agents – those that have been engaged by one or more TLF licensee to distribute content to schools. With this contract, Agents agree to only distribute content to licensees of TLF that have appointed them as their Agent.

**Agent**

*Agent e.g. For example a service provider or peak education body distributing content to another education body*

**Agency/Service Agreement not issued by TLF**

Education bodies can engage an Agent to act on their behalf in relation to TLF content. The nature of the agreement is determined by the two parties, not TLF. In the case of non-government systems, the legal relationship may be between an Agent and an individual school (or entity responsible for more than one school), but negotiations will usually be conducted with the Peak Education Body representing the school/s to TLF.

*There is no compulsion for a peak body to engage another party as an Agent – but if they choose to do so, this is how the relationship looks.
AGENT APPOINTMENT NOTIFICATION
Appointment of an Agent by a licensee in the National Digital Learning Resource Network

Request submitted by (licensee):

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<tr>
<td>Date</td>
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<td>Organisation</td>
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<td>Contact details</td>
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Details of Agent arrangements:

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<th>Name of Appointed Agent</th>
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<td>Type of organisation</td>
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<td>Period of appointment:</td>
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<td>Start date</td>
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<td>End date (if applicable)</td>
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<td>Has the Agent been engaged to obtain content* from ESA?</td>
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<tr>
<td>Details of the Appointment, specifying the activities the Agent will conduct on your behalf</td>
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*If the Agent will be accessing and/or distributing the content on your behalf, Education Services Australia will require the Agent to enter into an agreement with Education Services Australia that grants them the right to access the content only for the purpose of distributing that content to your organisation.