

Copyright in the Digital Teaching Environment: A Manual for Schools

At the time of writing this manual, the Copyright Act 1968 (Copyright Act) had been recently amended to incorporate the provisions of the Copyright Amendment (Disability and other Measures) Act 2017. This amending legislation repeals the Statutory Broadcast Licence (Part VA) and Statutory Text and Artistic Licence (Part VB) removing the copying limits and record keeping requirements, and replacing them with a new Part IVA, Division 4. These amendments simplify the operation of the educational statutory licences and provide more flexibility for educational institutions and collecting societies to negotiate agreed terms. At this stage, we advise Schools to continue to apply the existing copying limits and notice requirements of the Statutory Text and Artistic Licence until new copying limits or other requirements are agreed by Schools and Copyright Agency.

An updated version will be published when the new arrangements have been settled.

1. Introduction

This manual provides insights for Schools about using copyright material in a [Digital Teaching Environment \(DTE\)](#). For our purposes, a [DTE](#) is an online environment with features that enable students and teachers to store and engage with course content, manage course work, and explore material. Examples used in Schools include:

- learning management systems (such as Moodle, Blackboard, BrightDTE, SIMON, Schoology, Schoolbox, or Infrastructure Canvas);
- learning content management systems (such as EQUELLA);
- closed class areas on an education platform (Edmodo, Verso, Google Classroom or iTunesU);
- password protected wikis;
- portals;
- interactive whiteboard galleries and media libraries; and
- password protected share drives.

Teachers may copy a range of content into a [DTE](#) – including images, text, radio and television programs, film and sound recordings. This manual discusses the copyright considerations in relation to each of these types of content and will help teachers to comply with copyright obligations when working with a [DTE](#).

However, firstly, we draw your attention to the importance of identifying and using free material. The use of free material and strategies that avoid copying provides teachers and students with the flexibility they need to manage the content they use. We also encourage the use and creation of Open Educational Resources (OER) – which is a movement that is sweeping the education sector internationally.



2. Table of Contents

Contents

| | |
|---|----|
| 1. Introduction | 1 |
| 2. Table of Contents | 2 |
| 3. Smartcopying..... | 4 |
| Creative Commons..... | 5 |
| YouTube | 6 |
| Open Educational Resources | 6 |
| Attributing Creative Commons Material | 7 |
| Other Alternatives to Copying | 7 |
| Linking | 7 |
| Embedding | 7 |
| Material Created By You, Your School or Your Department / Administering Body..... | 8 |
| When You Have Permission from the Copyright Owner | 8 |
| Labelling Third Party Content in Creative Commons Licensed Material..... | 8 |
| Directing students to relevant content | 8 |
| 4. Text and Artistic Works..... | 9 |
| Background..... | 9 |
| Uploading images and text onto a digital teaching environment (DTE) | 11 |
| Labelling Copies made under the Statutory Text and Artistic Licence | 12 |
| Archiving or Deleting Material When It Is No Longer Needed..... | 13 |
| Further Information about the Statutory Text and Artistic Licence | 13 |
| Frequently Asked Questions..... | 13 |
| Why do we need to attribute material owned by Schools?..... | 13 |
| How do we know if the material is owned by Schools?..... | 13 |
| Why Can't We Just Include the Name of the Author?..... | 13 |
| Smartcopying Tips for Text and Artistic Works | 13 |
| 5. Music and Sound Recordings | 14 |
| Background..... | 14 |
| What schools covered by this Licence may do: | 14 |
| Schools are permitted to:..... | 15 |
| Performing and Communicating Music for Educational Use | 16 |
| What is performing and communicating? | 16 |
| Background..... | 18 |
| Smartcopying Tips for Radio and Television | 21 |



| | |
|---|----|
| 7. Television and Radio Programmes That Have Not Been Previously Broadcast | 22 |
| Podcasts and Live Streams | 22 |
| 8. Films and Videos..... | 23 |
| 9. Copying for Particular Purposes in Connection with Education – Library, Exam and Disability | |
| Copying..... | 26 |
| Background..... | 26 |
| Limited Preservation Copying By Libraries..... | 26 |
| Disability Access Exceptions..... | 27 |
| It is permissible to circumvent a technological protection measure (TPM) in order to rely on the organisational disability exception..... | 27 |
| Copying for Examinations..... | 27 |
| Appendix A - Information about deleting and archiving | 28 |
| Appendix B - Flexible Dealing - Requirements of Section 200AB..... | 28 |
| Access..... | 29 |
| Archiving or Deleting Material When It Is No Longer Needed | 29 |
| Deleting material | 29 |
| Archiving material | 29 |
| Labelling | 29 |
| Context Specific Examples..... | 29 |
| Copying Sound Recordings from Vinyl, CD or Cassette | 30 |
| Making a Digital Copy of a Film from a VHS..... | 30 |
| Online Free-to-Air Television and Radio..... | 30 |
| Copying and Communicating Music..... | 30 |
| Appendix C – Glossary of Key Terms | 30 |



3. Smartcopying

Background

The current statutory copyright licence schemes and the fair dealing exceptions in the Copyright Act are expensive, restrictive and complicated. When teachers download, save, print or email webpages from the Internet, those activities incur fees. The education sector in Australia pays more than \$700 million purchasing educational content each year. Often, that content cannot be modified, shared or remixed by teachers and students, except in very limited circumstances. This is not sustainable financially or pedagogically.

Openly licensed content, and strategies that avoid unnecessary copying – Smartcopying – is the answer!

This chapter has been deliberately placed first in this manual because the content and principles it refers to represent best practice in the management of copyright fees in the education sector. It discusses Creative Commons licensed material, which is generally free of copyright licensing fees. It also introduces the concept of Open Educational Resources (OER), which are educational or learning resources that are openly licensed, generally under the Creative Commons Attribution or Attribution ShareAlike licences. Finally, it provides information about strategies to avoid unnecessary copying, and the advantages of using your own material, thereby also avoiding additional statutory copyright licence fees.

OER provides the following benefits:

- **Safer:** You are generally free to reuse, remix, redistribute and adapt education resources without running the risk of breaching the complex copyright exceptions and copyright licence rules.
- **Internet compatible:** You don't have to worry about the extent of your permission to copy, distribute, adapt and remix content across different networks and media as it is made clear.
- **Enabling:** Content that is free to access is not necessarily free to reuse, remix or adapt. There are many online sources of information which can be freely accessed but often the right to adapt or remix is reserved by the copyright owner.
- **Accessible:** It is easy to access openly licensed materials with over a billion CC-licensed works on the Internet, and many searchable online databases of CC-licensed work are available.
- **Collaborative:** It encourages collaboration between educators and creates communities based on sharing of education resources which can increase the quality of materials and the development of ideas.
- **Cheaper:** It helps to save money on the national copyright fees and budgets and administrative costs of seeking permission, and allows education resources to be shared freely online with very low transaction costs.
- **Equitable:** It offers equal access to knowledge for everyone and allows for education resources to be adapted for minorities and those with disabilities.



Creative Commons

Creative Commons is a suite of free, publicly available licences that enable authors, musicians and other creators to grant rights to the public to use their work without payment. Schools can use Creative Commons licensed music, film clips and photographs in their projects and teaching resources free of charge.

All Creative Commons licences allow the material to be used for educational purposes. The National Copyright Unit (NCU) encourages teachers to use Creative Commons licensed content, and Open Education Resources (OER) wherever possible. The table below provides a summary of the different Creative Commons licences, and what is, and is not, permitted under each licence.

| Licence Type | Licence Conditions |
|---|--|
| Attribution  | Freely use, copy, adapt and distribute to anyone provided the copyright owner is attributed. |
| Attribution No Derivatives  | Freely use, copy and distribute to anyone but only in original form. The copyright owner must be attributed. |
| Attribution Share Alike  | Freely use, copy, adapt and distribute provided the new work is licensed under the same terms as the original work. The copyright owner must be attributed. |
| Attribution Non-commercial  | Freely use, copy, adapt and distribute for non-commercial purposes. The copyright owner must be attributed. |
| Attribution Non-commercial No Derivatives  | Freely use, copy and distribute to anyone but only in original form for non-commercial purposes. The copyright owner must be attributed. |
| Attribution Non-commercial Share Alike  | Freely use, copy, adapt and distribute for non-commercial purposes provided the new work is licensed under the same terms as the original work. The copyright owner must be attributed. |

For further information, including a detailed guide on how to find and attribute Creative Commons material, see the Smartcopying website at: www.smartcopying.edu.au/open-education/creative-commons/creative-commons-information-pack-for-teachers-and-students



YouTube

YouTube has established a special interface for Creative Commons licensed video content. You can search for Creative Commons licensed video and also apply a CC licence to your own videos when you upload them to YouTube. For more information about finding Creative Commons content on YouTube, see the Smartcopying website at: <http://www.smartcopying.edu.au/open-education/creative-commons/creative-commons-information-pack-for-teachers-and-students/how-to-find-creative-commons-material-using-youtube>

Open Educational Resources

Open Educational Resources (OER) are teaching and learning resources that are freely available for everyone to use, whether you are a teacher, student or self-learner. Learning and teaching content which is made available under licences which permit their free access, use, adaptation and sharing by others are transformed into OER. OER resources are licenced under Creative Commons (CC) licences, in particular the CC-BY (Attribution) and CC-BY-SA (Share Alike) licences.

OER are not restricted to one format and can include hard copy and digital text, audio, video, images, interactive multimedia and combinations of these. OER can cover all levels of a learning plan from a single learning object to an entire course. They include worksheets, curriculum materials, lectures, homework assignments, quizzes, class activities, pedagogical materials, games and many more resources from around the world.

OER's fundamental values ensure they are free for anyone to use and can be freely distributed, adapted, translated, remixed and improved.

This means that users are free to:

- **Retain:** Users have the right to make, archive, and keep copies of the content;
- **Reuse:** Content can be reused in its unaltered form;
- **Revise:** Content can be adapted, adjusted, modified or altered;
- **Remix:** The original or revised content can be combined with other content to create something new; and
- **Redistribute:** Copies of the content can be shared with others in its original, revised or remixed form.

For more information on OER and Creative Commons please see the following links:

- www.smartcopying.edu.au/open-education/open-education-resources
- [http://www.smartcopying.edu.au/open-education/open-education-resources/open-educational-resources-\(oer\)-a-toolkit-for-teachers-curriculum-and-elearning-developers](http://www.smartcopying.edu.au/open-education/open-education-resources/open-educational-resources-(oer)-a-toolkit-for-teachers-curriculum-and-elearning-developers)www.scottle.edu.au/ec/p/creativeCommons
- open4us.org/find-oer/



Attributing Creative Commons Material

A requirement of all Creative Commons licences is attribution. Creative Commons material should be attributed with details of the copyright owner and author (if different to the copyright owner), the name of the work, where the material was copied from and when it was copied. Some Creative Commons material may also require further information to be included. For example, when using Creative Commons material, that users should include a link to the Creative Commons licence.

EXAMPLE

PETER ALEXANDER, 'SOUNION TEMPLE', www.flickr.com/photos/40681760@N07/3961143351/, 5 AUGUST 2009. LICENSED UNDER THE CREATIVE COMMONS 2.0 ATTRIBUTION LICENCE: www.creativecommons.org/licenses/by/2.0/deed.en

Other Alternatives to Copying

The statutory licences may seem convenient, but their rules are complicated and they are expensive. Teachers can use alternatives to copying to help ensure that copyright costs in Schools remain manageable.

Linking

We recommend that teachers provide students with access to third-party text and artistic works by a link to the content, where practical, rather than by uploading a copy to a [DTE](#).

Linking is not a copyright activity under the Copyright Act. This is because you are not actually 'copying' any material, rather, you are providing a path to its location. So, providing links to material on external websites is a great way of managing copyright.

Generally, it's not necessary to seek the permission from a website owner when creating a link to their website. However, it is important to acknowledge the website. The appropriate form of acknowledgement will depend on the circumstances. For example, if you are linking to a useful resource and you know the author of that resource, you may wish to include an acknowledgement such as "*Mary Smith from X Institute has provided a useful summary on Y's webpage*".

Embedding

Embedding a link allows the user to view and access content in its original location without having to leave their website (e.g. blog or wiki) or intranet. It is commonly used for displaying online films, e.g. YouTube films on websites.

Embedding involves copying a portion of HTML code, which is often displayed with the content, and pasting it onto your website. Rather than linking to the content, it will display the content on your website.

The primary advantage of embedding is that you don't need to copy the material to make it available on your website. Further, embedding is a good way to ensure that students only access the specific material you want them to see, rather than an entire webpage, which may contain other material not appropriate or relevant to a class exercise. It also means that the students don't leave the School [DTE](#) (e.g. class wiki or blog) to see that material.



Material Created By You, Your School or Your Department / Administering Body

If you create teaching resources in the course of your employment, and they only contain your own material or material of other employees of your school or department / administering body, you don't need to rely on the statutory licences to use this material. This is because the school or department / administering body owns the copyright.

However, you must always attribute the material properly. You must attribute it by including the name of your school or department / administering body and the year of publication on each page.

EXAMPLE

© NSW DEPARTMENT OF EDUCATION 2016

OR

© SYDNEY BOYS HIGH SCHOOL 2010

For more information about attribution of text and artistic works in Schools, see the Smartcopying website at: <http://www.smartcopying.edu.au/information-sheets/schools/attribution-of-text-and-artistic-works-schools>.

When You Have Permission from the Copyright Owner

If you have permission (e.g. a licence) from the copyright owner to use their material in your resource, you can use it within the scope of that permission. You should check that the permission allows you to upload the material to your [DTE](#), and make it available to students. Note how the copyright owner wants to be attributed, and make sure you attribute the material clearly on each page. If you don't have permission to use the material, and you want to use more than 10% of the work, you may wish to contact the copyright owner to try to obtain permission to do so.

Labelling Third Party Content in Creative Commons Licensed Material

Whether the third-party material that you use is licensed under Creative Commons, or not, it is important to properly label all print course material published by and for Schools. The purpose of labelling is to assist with the distribution of copyright royalties under the statutory licence scheme, and to ensure that Schools don't pay to copy material that they own or have permission to use.

For more information on when and how to label content, see the Smartcopying website at: <http://www.smartcopying.edu.au/information-sheets/schools/labelling-school-material>

Directing students to relevant content

In addition to embedding and linking, educators can inform their students where to find materials, and they can locate and deal with the material themselves. This does not attract a copyright fee because students may make limited copies for themselves under the fair dealing rules. For more information about what students can do with copyright material, see the Smartcopying website at: <http://www.smartcopying.edu.au/information-sheets/schools/students-and-copyright>



4. Text and Artistic Works

Background

Teachers regularly make copies of text and imagery for use in classrooms and for other educational purposes. Generally, when teachers make these copies, they do so under a special licence in the Copyright Act known as the Statutory Text and Artistic Licence. This chapter discusses copying and communicating under that licence.

For more information about The Statutory Text and Artistic Licence in Schools, see the Smartcopying website at: [http://www.smartcopying.edu.au/copyright-guidelines/education-licences-\(statutory-and-voluntary-licences\)/education-licence-b-statutory-text-and-artistic-licence](http://www.smartcopying.edu.au/copyright-guidelines/education-licences-(statutory-and-voluntary-licences)/education-licence-b-statutory-text-and-artistic-licence)

The Statutory Text and Artistic Licence is administered by a 'collecting society'. Collecting societies are organisations that collect fees for the use of copyright material and distribute those fees to the owners of the copyright material. The relevant collecting society for this licence is Copyright Agency Limited (CA). The School sector pays licence fees to CA to copy and communicate text and artistic material the under the licence.

This chapter also addresses alternatives to copying under the Statutory Licence, for example, copying Creative Commons licensed material; and alternatives to copying, such as linking and embedding. These alternatives are preferable, because they do not attract copyright fees! Teachers are encouraged to copy material that is free to use.

What does the Statutory Text and Artistic Licence Permit?

The Statutory Text and Artistic licence allows Schools to copy and communicate text and artistic works in both hard copy and electronic form, including:

- photocopying hardcopy books, journals, newspapers or reports;
- scanning from hardcopy works;
- printing from electronic material such as websites, e-books or CD-ROM's;
- uploading text or artistic material to a DTE; or
- making electronic copies of works (e.g. saving to disc).

What are text and artistic works?

Text material includes literary, dramatic and musical works, and 'artistic works' include paintings, photos, drawings, even moulds or casts for sculptures. For information about how the copyright law characterises different types of material, please see the Smartcopying website at: [www.smartcopying.edu.au/copyright-guidelines/copyright---a-general-overview/1-3-what-is-protected-\(types-of-works\)](http://www.smartcopying.edu.au/copyright-guidelines/copyright---a-general-overview/1-3-what-is-protected-(types-of-works))

What is a copy in the Digital Teaching Environment?

A copy is a reproduction of a literary, dramatic, musical or artistic works and includes printing, photocopying, scanning, downloading/saving a copy to a personal computer or device or personal cloud space and saving a copy in a digital format.



What is communicating?

Communicating means making copyright material available online or electronically transmitting copyright material.

'Making material available online' can include uploading material to a digital space for student access and use via password protected access such as:

- a shared drive/intranet (eg Microsoft 365); or
- content or learning management systems (eg Moodle, Blackboard, Brightspace or Equella); or
- to a closed class area on an education platform (eg Edmodo, Verso, Google Classroom or iTunes U).

'Electronic transmission' includes emailing, streaming or using an electronic reticulation system to share material (eg, libraries might have an electronic delivery system to transmit material centrally).

A communication **does not include**:

- Displaying a website live in class for students to read
- Bookmarking and sharing links to online articles or resources
- Emailing links to online articles and resources

These activities are not copyright activities and do not require a licence or permission.

Copying and communication must be for educational purposes

The Statutory Text and Artistic Licence allows educational institutions to copy for the educational purposes of the institution. Educational purpose includes copies and communications of works made for:

- teaching purposes;
- used as part of a course of study;
- retained for library use as a teaching resource.

What **doesn't** the Statutory Text and Artistic Licence Permit?

The Statutory Text and Artistic Licence does not cover:

- copying of computer programs;
- copying or communicating text or artistic works for uses other than educational use;
- copying or communicating more than allowed under the licence rules; or
- reproduction or communication of sound recordings, audio-visual material or webcast or net casts (web radio or web TV).

There are other licences or arrangements for these items. Please see the other chapters in this manual.



What are the Limits of Copying I Can Do under the Statutory Text and Artistic Licence?

There are agreed rules about how much of a text or artistic work a School can copy, and how it can be communicated under the Statutory Text and Artistic Licence.

Copying Artistic Works

There are no specific copying limits under the Statutory Text and Artistic Licence for *artistic works*.

Copying Text Works

The copying limits for *text works* are currently:

- 10% or 1 chapter of a book (whichever is greater);
- 10% of words on a website or from a CD-ROM; and
- One article in a journal, more than one if on the same subject matter (including articles from online publications such as e-journals, e-books or e-newspapers).

You can copy the whole work if:

- it has not been separately published; or
- is not commercially available within a 'reasonable time' at an ordinary commercial price.

As a general guide it is recommended that a 'reasonable time' is six months for textbooks and thirty days for other material

This licence also allows teachers to digitise hard copy works to make them available in a DTE. In all cases, it is recommended that you only copy what you need for educational purposes to minimise the copyright costs for the School sector under the Statutory Text and Artistic Licence.

Internet Print World Analogy Table

Agreed copying limits for the Statutory Text and Artistic Licence set different limits depending on whether the source material is an article in a periodical publication, an anthology or some other general type of work (eg a book). A table has been prepared which outlines how these categories apply to some common internet publications it can be found by here - Internet Print World Analogy Table [http://www.smartcopying.edu.au/copyright-guidelines/education-licences-\(statutory-and-voluntary-licences\)/education-licence-b-statutory-text-and-artistic-licence/education-licence-b-statutory-text-and-artistic-licence/internet-print-world-analogy-table](http://www.smartcopying.edu.au/copyright-guidelines/education-licences-(statutory-and-voluntary-licences)/education-licence-b-statutory-text-and-artistic-licence/education-licence-b-statutory-text-and-artistic-licence/internet-print-world-analogy-table)

Uploading images and text onto a digital teaching environment (DTE)

Images and text copied under the Statutory Text and Artistic Licence can only be uploaded onto password protected DTE's. Access to these resources should be limited to the minimum required number of students and staff. That is, where possible, limit access to the material to those students who need to view the material for classroom and/or homework exercises, and to delete or archive the material once it is no longer needed.



Labelling Copies made under the Statutory Text and Artistic Licence

Content that is made available to students under the Statutory Text and Artistic licence should - wherever possible - include a label containing sufficient information to enable Copyright Agency to identify the owner of copyright. For example: the name of the author, title, publisher, edition or date of publication, and ISBN or ISSN. (It's not enough to include just the name of the author: the author is often different from the copyright owner.) If you are copying from a website, you should include the full URL. If you are copying broadcasts, include the name of the program, the channel it was copied from and the date the copy was made.

There is no longer any statutory obligation to include a notice stating that copyright material has been copied/communicated in reliance on the Statutory Text and Artistic Licence. Despite this, NCU suggests that it would be good practice to include the following notice where this is reasonably practicable. This is in order to limit the potential liability of the School in the event that a student uses the content in a way that may infringe copyright:

[WARNING]

This material has been copied [and communicated to you] in accordance with the statutory licence in section 113P of the Copyright Act. Any further reproduction or communication of this material by you may be the subject of copyright protection under the Act. Do not remove this notice

A copy of this notice is on the Smartcopying website at: [http://www.smartcopying.edu.au/copyright-guidelines/education-licences-\(statutory-and-voluntary-licences\)/section-113p-notice](http://www.smartcopying.edu.au/copyright-guidelines/education-licences-(statutory-and-voluntary-licences)/section-113p-notice)

- A practical way of including this notice to electronic material is to insert a link to the notice from the attribution information. This would mean that the notice would have to be uploaded onto one spot on the repository and be linked to when required.

Copied under the statutory licence in s 113P of the Copyright Act
[Author, Title, Date]
[Link to warning notice]

- Where it is not possible to include a link to the notice from the attribution information, the notice could be displayed (flashed) on the screen as the user logs into the password protected share drive or intranet or content or learning management system or cloud storage. If using this approach, you should modify the notice to make clear that it applies to only some of the material on the repository:

[WARNING]

Some of this material may have been copied [and communicated to you] in accordance with the statutory licence in section 113P of the Copyright Act . Any further reproduction or communication of this material by you may be the subject of copyright protection under the Act. Do not remove this notice.

A copy of this notice is on the Smartcopying website at: [http://www.smartcopying.edu.au/copyright-guidelines/education-licences-\(statutory-and-voluntary-licences\)/section-113p-notice](http://www.smartcopying.edu.au/copyright-guidelines/education-licences-(statutory-and-voluntary-licences)/section-113p-notice)

If you are presenting a PowerPoint that includes material copied under the Statutory Text and Artistic Licence, you could include an introductory or closing slide containing this notice.



Archiving or Deleting Material When It Is No Longer Needed

Clearing out material that is no longer required is a great way to ensure compliance with Statutory Licences, this can be done in two ways – deleting and archiving. See [Appendix A](#) for more information about deleting and archiving.

Further Information about the Statutory Text and Artistic Licence

For further information about the Statutory Text and Artistic Licence, see the Smartcopying website at: www.smartcopying.edu.au/scw/go/pid/700

Frequently Asked Questions

Why do we need to attribute material owned by Schools?

Material created by Schools/Your Department or administering body is a valuable asset, and it is important to properly identify it. It is also essential to clearly attribute School owned material so that Schools don't pay copyright royalties to CA to copy its own material. CA is a copyright royalty collecting organisation. Every year Schools pay CA significant amounts of copyright royalties, and it is possible that some of these royalties are for copying of material owned by Schools.

How do we know if the material is owned by Schools?

Generally, copyright in the material created by you during the course of your employment at a School will be owned by your employer. For teachers in the government system, [Crown Copyright](#) will apply. In the Independent and Catholic sectors the peak body, diocese or school, depending on who your contract of employment is with, will own copyright in original material created as part of your duties.

Why Can't We Just Include the Name of the Author?

The author is often different from the copyright owner, and, irrespective of whether you include the name of the author, it is important to include the copyright information set out above so that CA knows that copyright in the material is owned by Schools and should not be counted in the survey.

Smartcopying Tips for Text and Artistic Works

In sum, to minimise the copyright fees payable by the State departments of Education/ administering bodies for use of text and artistic works, it is good practice to:

- Use Creative Commons licensed material.
- Link or embed text or images wherever possible, rather than copying the works.
- Use material created by you, your institute or department / administering body.
- Obtain permission from the copyright owner to use the material.
- If you must rely on the Statutory Text and Artistic Licence:
 - Limit access to the text and images to those students who need to access the text or images for class or homework exercises, e.g. the students enrolled in a course rather than all the students enrolled at a school.
 - Archive or remove the text and images as soon as they are no longer required for class or homework exercises. This issue further highlights the advantages of using Creative Commons



licensed material, which does not need to be deleted or archived. See [Appendix A](#) for more information about deleting and archiving.

5. Music and Sound Recordings

Background

1. There are three separate music licences that regulate the use of musical works and sound recordings within the school sector. The APRA Licence – for the public performance and communication of Musical Works by Schools
2. The AMCOS Licence – for the photocopying of Printed Musical Works by Schools
3. The AMCOS/ARIA/APRA Licence – for the reproduction and communication of Musical Works and Sound Recordings by Educational Institutions

This manual will focus on the AMCOS/ARIA/APRA Licence as it is the most relevant to the use of music in DTEs. For information about the two other music licenses please see the Educational Licenses section of Smartcopying ([http://www.smartcopying.edu.au/copyright-guidelines/education-licences-\(statutory-and-voluntary-licences\)](http://www.smartcopying.edu.au/copyright-guidelines/education-licences-(statutory-and-voluntary-licences)))

The [AMCOS/APRA/ARIA licence](#) covers the use of [sound recordings](#) (ie recorded music) in schools and at school events, and the making audio and video recordings of school events involving music, for non-commercial, [educational](#) and commemorative purposes.

Which schools are covered by this Licence?

All government primary and secondary schools, and most Catholic and independent primary and secondary schools, are covered by this licence. If you are unsure if your school is covered, find your peak body's representative [here](#) and contact them to check.

What schools covered by this Licence may do:

Make Sound Recordings

Schools are permitted to make copies of [sound recordings](#) (eg copies of tracks from CD, or copies of digital music files) for the educational purposes of the school in any format:

- to be played at a [school event](#) (eg copying music to CD or MP3 to play at an event)
- for inclusion in an electronic presentation (eg classroom PowerPoint slides, or in presentations at assemblies or functions)
- to play in class for educational purposes (eg to play music recordings relevant to material being studied)
- to be used as part of a course of instruction (eg when teaching how to make or use sound recordings in music or multimedia classes)
- to synchronise with recordings made of a [school event](#) (eg to add a musical soundtrack to a video recording of a school assembly, presentation night or sports day).

Make Video and audio Recordings



Schools and the school community are permitted to make video and audio recordings of [school events](#) at which live or recorded music is played – eg parents and friends can make a video of a presentation night at which the school band played.

Note however that parents and friends are only able to use these recordings for their private and domestic use (ie they are not permitted to upload the recordings onto Facebook, YouTube, etc.).

Upload to a DTE

Schools with a password protected DTE are permitted to:

- upload the copies of [sound recordings](#) (see 'Make Sound Recordings' above); and
- upload audio or video recordings of school events described above (see 'Make Video and audio Recordings' above), and
- stream to staff and students.

For example, you can upload copies of CD tracks to the school DTE so that you can play them in class, or upload a video of a school concert for access by staff and students.

Make a Live Communication – ie "Webcast" school events – over the Internet

Schools are permitted to:

- make a live [communication](#) – ie stream in real time – a recording of a school event from the school's [website](#) to the internet (ie not just within the school's intranet).

This communication must be streamed as the event is occurring. You cannot leave a recording of the event available on the school website or anywhere else on the internet once the event is finished.

However you can move a recording of the event onto the school's password protected content repository for access by staff and students, as discussed under 'Upload to a DTE' above.

For example, you can stream video of a presentation day at which school bands are playing from the school website as the event is occurring, and once the event has finished a recording can be stored on the school intranet for teachers and students to access.

For further information please see the AMCOS/APRA/ARIA Licence information sheet: [http://www.smartcopying.edu.au/copyright-guidelines/education-licences-\(statutory-and-voluntary-licences\)/education-licence-e-amcos-aria-apra-licence](http://www.smartcopying.edu.au/copyright-guidelines/education-licences-(statutory-and-voluntary-licences)/education-licence-e-amcos-aria-apra-licence)

What the Licence does not cover:

This licence does not permit you to:

- place copyright-infringing copies of music on your school content repository – this means you should not work with any music you suspect is 'pirated'
- make a video recording of a [Grand Rights Works](#) (or a choral work of over 20 minutes duration) in its entirety (eg this licence doesn't permit you to produce a DVD of a school musical)



- make a public broadcast of any recording (for example, via a publicly accessible school radio station or online radio or video portal) – the only "broadcast" you can make is a live stream from your school website, as discussed under 'Make a Live Communication' above
- upload any recordings to the internet for download by members of the public
- remix, sample or segue any sound recordings (although this may be permitted to some extent under the 'fair dealing' and 'flexible dealing' exceptions in the Act – see our information sheets on [copyright exceptions](#) and [flexible dealing](#) for more details)
- publically perform musical works (this may be covered by the APRA licence).

Other Relevant Exceptions

Performing and Communicating Music for Educational Use

In the absence of a licence, teachers and students can perform and communicate music in class (including virtual classes and distance education students) under a special exception in section 28 of the Copyright Act. To rely upon this section, the music must be used in the course of educational instruction (e.g. teaching, preparing to teach) that is not for profit, and the people involved in the course must be providing or receiving instruction or be directly connected with the place where the instruction is given.

What is performing and communicating?

Music is 'performed' where it is visually or aurally represented. For example, playing sound recordings in any format (e.g. from CD, DVD, cassettes, digital music from iTunes, Google Play Store), or staging a performance of a play.

Communicating means making copyright material available online or electronically transmitting copyright material. 'Making available' can include putting material on the internet or intranet. 'Electronic transmission' includes emailing, [streaming](#) or electronic reticulation.

Communicating *doesn't* include playing or streaming live television or radio programmes; or bookmarking and sharing links to content on the Internet. These activities are not copyright activities and therefore don't require a licence or permission.

Therefore, under section 28, teachers and students can do the following in class:

- sing songs and play instruments;
- play sound recordings (e.g. using a tape/CD/DVD player, electronic reticulation system learning management system, interactive whiteboard or virtual classroom software); and
- play a film which contains music using a DVD player, electronic reticulation system or from a [DTE](#).

Section 28 does not permit teachers and students to play a sound recording or a film to the parents of students or for non-teaching purposes, such as at a graduation, fashion show, or concert.

Copying and Communicating Music for Educational Use



This section may be relied on by schools not covered by the APRA/AMCOS/ARIA Licence. The flexible dealing exception under section 200AB (section 200AB) of the Copyright Act also permits teachers to use sound recordings for educational purposes, where other statutory licences and other education free use exceptions such as fair dealing or exam copying are not available.

Common situations where the flexible dealing exception might be applicable to music in Schools under section 200AB include:

- format shifting from vinyl, cassette or CD into digital format such as mp3; and
- uploading sound recordings onto password protected content repositories such as a [DTE](#), provided the digital copy can only be viewed by teachers and students who are directly giving or receiving the instruction for which the copy has been made (i.e. accessible by students of one course rather than the entire student population) and are taken down once no longer needed.

For more information about section 200AB, including context specific examples, see [Appendix B](#).

Using Digital Music Stores / Players for Educational Purposes

When buying digital content from online stores, such as the iTunes Store, Google Play or Amazon, you must agree to the store's Terms of Use. The iTunes, Google Play and Amazon Terms of Use state that products purchased from the store can only be used for 'personal, non-commercial use'. This expression may not include 'educational use'.

It is unclear whether these terms are enforceable and can prevent Schools from making educational use of the content for educational purposes. However, while there may be a risk that a School could be said to be in breach of contract if it uses music downloaded from an online store for educational purposes, we think the better view is that it would not infringe copyright if the section 200AB or section 28 exceptions in the Copyright Act applied.

Section 28 enables teachers to play sound recordings from the music library in their computer or tablet to students in the classroom, and from digital music players such as iTunes, Windows Media Player, Google Play Music or Amazon Music. This also applies to recordings from compact disc or other similar sources. Section 200AB also permits you to 'rip' or import tracks from a CD in limited circumstances. This is also called 'format shifting'.

Practical Alternatives to Buying Digital Music Online

There are better and cheaper alternatives to buying music online or being limited to very narrow uses of music in limited circumstances. Please consider some of the options below.

Creative Commons Music

There are several websites that publish digital music that is licensed under Creative Commons. Creative Commons licensed material can be copied for educational purposes because the copyright owner has already given permission to use their music.

A primary advantage of using Creative Commons licensed material is that access need not be restricted to the students of one course.

The following websites contain Creative Commons licensed music:

- ccmixter.org – CC sound remix tool and archive



- www.opsound.com – CC music archive
- www.magnatune.com – CC record label
- www.jamendo.com – CC music distribution site
- freesound.org – collaborative database of CC licensed sounds

Remember to comply with the terms and conditions of the applicable Creative Commons licence. For more sources of Creative Commons licensed music, see the Smartcopying website at: <http://www.smartcopying.edu.au/open-education/open-education-resources/where-to-find-cc-licensed-material/where-to-find-cc-licensed-music>

Using Free iTunes Content

The iTunes store contains a variety of free content. This includes music, TV shows, films, podcasts and applications. This content can be streamed direct from the iTunes store or downloaded into your iTunes player, without payment, and used for educational purposes.

A user is not required to accept the iTunes Terms of Use when downloading free content. As a result, it is arguable that the iTunes Terms of Use will not affect how the content can be used.

For this reason, teachers should try to use free iTunes content instead of purchased iTunes content wherever possible to minimise the risk that they are breaching the conditions of use. In any event, even if the terms of use do apply, if either the section 200AB or section 28 exceptions in the Copyright Act also apply, as noted above we think the better view is that copyright is not infringed.

Audio Network Music

Audio Network is an online store where sound recordings can be purchased and licensed for a modest price to suit the needs of an institute. For further information on Audio Network, see: www.audionetwork.com

6. Broadcast Radio and Television

Background

Teachers are able to make copies of radio and television programs for use in classrooms and for other educational purposes under a special licence in the Copyright Act known as the Statutory Broadcast Licence. This chapter discusses copying and communicating under that licence.

For more information about The Statutory Broadcast Licence in Schools, see the Smartcopying website at: [http://www.smartcopying.edu.au/copyright-guidelines/education-licences-\(statutory-and-voluntary-licences\)/education-licence-a-statutory-broadcast-licence](http://www.smartcopying.edu.au/copyright-guidelines/education-licences-(statutory-and-voluntary-licences)/education-licence-a-statutory-broadcast-licence)

The Statutory Broadcast Licence is administered by a ‘collecting society’. Collecting societies are organisations that collect fees for the use of copyright material and distribute those fees to the owners of the copyright material. The relevant collecting society for this licence is Screenrights. The School sector pays licence fees to Screenrights to copy and communicate broadcast material under the licence.

This chapter also addresses alternatives to copying under the Statutory Licence, for example, copying Creative Commons licensed material; and alternatives to copying, such as linking and



embedding. These alternatives are preferable, because they do not attract copyright fees! Teachers are encouraged to copy material that is free to use.

What does the Statutory Broadcast Licence Cover?

The Statutory Broadcast Licence covers:

- TV broadcasts from free to air television (ABC, SBS, channels 7, 9, 10, Gem, etc.);
- Radio broadcasts from free to air radio (AM, FM, Digital);
- Pay TV (e.g. Foxtel);
- Online TV/radio programs from a free to air broadcaster's website including podcasts and catch up TV provided it has been broadcast by the free to air broadcaster.

The licence covers any program broadcast on television or radio, including: feature films; short films; documentaries; news and current events; television series; game shows; reality TV; quiz shows; cartoons; advertisements; and music video clips.

What is not covered by the Statutory Broadcast Licence?

The Statutory Broadcast Licence does not cover:

- Content created by Pay TV/Radio Broadcasters for the internet eg webseries;
- Television programs from [streaming](#) services (e.g. Netflix, Stan, Amazon Prime);
- Purchased television programs from iTunes, Google Play, online or retail stores (e.g. ABC Stores, Dymocks) in any format (e.g. Mp4, Blu-ray, DVD or VHS);
- Online videos (e.g. from YouTube, vimeo, Edmodo, Khan Academy); or
- Online Games (e.g. from www.abc.net.au/abcforkids/).

You can copy short extracts from films and online videos for educational instruction in certain circumstances. For more information on copying short extracts, see the Smartcopying website at: www.smartcopying.edu.au/information-sheets/schools/flexible-dealing

Acts not permitted under the Statutory Broadcast licence

The following activities are not permitted under the Statutory Broadcast Licence:

- selling or supplying Copy Programs (defined below) for a profit;
- copying for non-educational purposes;
- copying on behalf of an institution not covered by a remuneration notice; and

lending Copy Programs to an institution not covered by a remuneration notice.

What is a copy?

A copy, for the purpose of the Statutory Broadcast Licence, is a reproduction of a radio or television program from a free or pay television broadcast in any format (e.g. VHS, DVD, MP4) (referred to throughout this document as Copy Programs). It makes no difference what recording device or



platform you use to make a Copy Program, including educational products/services such as Clickview, Functional Solutions, Kanopy or OnDemand Media

What is a communication?

A communication for the purposes of the Statutory Broadcast licence includes:

- uploading or saving Copy Programs to a password protected share drive, intranet, content or learning management system or cloud storage for student and staff access; and
- emailing Copy Programs to staff and students.

A communication does not include playing or [streaming](#) live television or radio programs; or bookmarking and sharing links to online film and videos. These activities are not copyright activities and therefore do not require a licence or permission.

No Copying Limits

There are no specific copying limits under the Statutory Broadcast Licence. This means that an educational body or teacher can copy an entire broadcast of a television program or television series for educational purposes. However, it is recommended that you only copy what you need for educational purposes. This is important for managing copyright costs under the Statutory Broadcast Licence.

Link Where Possible

It is important to link to free-to-air television and radio programmes from the broadcaster's website wherever possible.

Access

Broadcasts copied under the Statutory Broadcast Licence can only be uploaded onto password protected [DTEs](#).

Labelling Copies made under the Statutory Broadcast Licence

Content that is made available to students under Statutory Broadcast licence should include a label containing the name of the program, the channel it was copied from and the date the copy was made. This is to enable Screenrights to identify the owner of copyright.

There is no longer any statutory obligation to include a notice stating that copyright material has been copied/communicated in reliance on the Statutory Broadcast Licence. Despite this, NCU suggests that it would be good practice to include the following notice where this is reasonably practicable. This is in order to limit the potential liability of the School in the event that a student uses the content in a way that may infringe copyright:

[WARNING]

This material has been copied [and communicated to you] in accordance with the statutory licence in section 113P of the Copyright Act. Any further reproduction or communication of this



material by you may be the subject of copyright protection under the Act. Do not remove this notice

A practical way of including this notice to electronic material is to insert a link to the notice from the attribution information. This would mean that the notice would have to be uploaded onto one spot on the repository and be linked to when required.

Copied under the statutory licence in s 113P of the Copyright Act

Media Watch', ABC, 17 August 2009

[Link to warning notice]

Where it is not possible to include a link to the notice from the attribution information, the notice could be displayed (flashed) on the screen as the user logs into the password protected share drive or intranet or content or learning management system or cloud storage. If using this approach, you should modify the notice to make clear that it applies to only some of the material on the repository:

[WARNING]

Some of this material may have been copied [and communicated to you] in accordance with the statutory licence in section 113P of the Copyright Act . Any further reproduction or communication of this material by you may be the subject of copyright protection under the Act. Do not remove this notice.

Smartcopying Tips for Radio and Television

The institute or department / administering body pays fees for the copying of broadcast radio and television programs under the Statutory Broadcast Licence. To minimise the costs payable under this licence, it is good practice to:

1. Link, where possible, to online programs on broadcaster websites.
2. Limit access to the broadcast to those students who need to access the broadcast for class or homework exercises (e.g. students enrolled in one course rather than all students enrolled at the institute).
3. Remove the broadcast as soon as it is no longer required for class or homework exercises. For more information about deleting and archiving, see [Appendix A](#).

Obtaining copies from other Educational Institutions

The Statutory Broadcast Licence allows educational institutions which have a remuneration notice with Screenrights to provide copies of radio and television programs to other educational institutions with a remuneration notice with Screenrights.

Obtaining Copies from Resource Centres



Educational institutions which have a remuneration notice with Screenrights can obtain copies of television and radio programs from resource centres.

Set out below is a list of resource centres:

| | |
|---------------------------|--|
| ClickView: | http://www.clickview.com.au |
| Enhance TV: | www.enhancetv.com.au |
| TV4Education: | www.tv4education.com |
| QUT Tape Copying Service: | http://www.itservices.qut.edu.au/avservices/avrecording.jsp |
| ResourceLink: | email: mtucker@bne.catholic.edu.au (Copies are only supplied to Brisbane Catholic schools) |
| Informit | http://www.informit.com.au/tvnews.html |
| Understanding Faith | http://www.understandingfaith.edu.au |

Further information on resource centres can be found here [Can I purchase or request a Copy Program from a resource centre?](#)

7. Television and Radio Programmes That Have Not Been Previously Broadcast

Background

Use of television and radio programmes that have not been broadcast is different to those programmes that have. This chapter addresses what you can do with television and radio programmes that have not been previously broadcast (eg content on YouTube Live, Facebook Live, Twitch).

Podcasts and Live Streams

Teachers are not permitted to copy podcasts and Live Streams of audio and television programs under the Statutory Broadcast Licence unless they have previously been broadcast on free to air radio or television. If a podcast or Live Stream is made available on the Internet and is not of a program that has been previously broadcast on radio or television, you still may be able to use it. It will depend on whether:

- the copyright owner has given permission; or
- a statutory exception applies, such as for fair dealing, flexible dealing or another statutory exception.

These questions are discussed in more detail below.

You will need to consider these questions if you want to use, for example:

- a podcast available of a subscription broadcast program, for example, on the Discovery Channel website;
- a podcast available on the ABC's website of material connected with a program shown on the ABC (but not actually of the program itself such as additional "web only" content associated with a television program);
- a podcast available on a website other than a broadcaster's website, such as Taronga Zoo, NASA or the Australian Film Commission;



- a podcast available on iTunes directly from the creator; or
- a lecture live streamed to YouTube.

Again, if a teacher is making a podcast available on the Internet or intranet, they should make sure it can only be accessed by staff and students.

Has the copyright owner given permission?

There are two situations where you will have permission to use the podcast:

- where the website says that educational use is permitted e.g. a notice states the material is:
- where the teacher has received permission from the copyright owner to use the podcast (e.g. you may be able to get permission by asking the person or organisation listed at the 'Contact Us' section on the website).

Under the flexible dealing exception in s200AB, **teachers** can copy podcasts and live streams for educational instruction if the use is not covered by another exception or statutory or voluntary licence. To work out if the exception will be available, teachers must assess whether:

- the proposed use is narrow;
- it would conflict with the normal way the copyright owner exploits the material, and
- the use would unreasonably harm the copyright owner.

For more information about the flexible dealing exception, see [Appendix B](#).

Playing a Podcast or Live Stream in class

Teachers may also be able to rely on the exception in section 28 of the Copyright Act if they want to [communicate](#) a podcast or live stream to their class. Section 28 allows teachers and students to play podcasts and live streams in class where it is in the course of education and not for profit; and the people in the audience or class are giving or receiving instruction, or are directly connected with the place where instruction is given.

For more information about using podcasts, see the Smartcopying website at: <http://www.smartcopying.edu.au/information-sheets/schools/podcasts---using>

8. Films and Videos

Background

This chapter explains what teachers and students can do with film and video in the classroom. Essentially, teachers may rely upon the flexible dealing exception under section 200AB of the Copyright Act. This section should be read with [Appendix B](#) which provides further information about section 200AB.

Uploading Copies of Films to Communicate in Class



Communication means making a film available online for student access or viewing such as uploading to an intranet or learning management system. Teachers may upload films online or make a digital copy of a VHS/DVD to upload onto a [DTE](#) under section 200AB of the Copyright Act, provided the film can only be viewed by teachers who are directly giving, and students who are directly receiving the instruction for which the copy has been made (i.e. the film is accessible to students in one course as opposed to the students enrolled in the entire institute).

For more information about the flexible dealing exception under section 200AB, see [Appendix B](#).

The original must be a lawful copy

It's important that the original film from which the copy was made was a legitimate, lawful copy. Avoid copying films off peer-to-peer websites, as these films are more likely to be pirated copies. It is best to use films purchased by the institute/staff or a genuine, non-pirated copy given to the institute/staff.

Terms of Use

The Copyright Act permits copies to be made under s 200AB when you can meet the above requirements, but a lot of commercially purchased content will have terms of use that limit use to 'personal, non-commercial' uses. This may not allow copying by teachers and schools for 'educational purposes'.

This is a grey area, but the NCU believes that it is unlikely the terms of use would override section 200AB, and as such, there is a low risk of breaching the conditions of use. Contact the NCU for further advice.

YouTube

Using YouTube

You may be able to stream YouTube videos to a class under section 28 of the Copyright Act. This [streaming](#) may be directly from the YouTube website, or through a link to a YouTube video embedded on another website. Section 28 allows teachers and students to play YouTube videos in class where it is in the course of education and not for profit; and the people in the audience or class are giving or receiving instruction, or are directly connected with the place where instruction is given.

For more information about section 28, see the Smartcopying website at: <http://www.smartcopying.edu.au/information-sheets/schools/performance-and-communication-of-works-and-audio-visual-material-in-class---what-am-i-allowed-to-do->

Risk Management Tips when Using YouTube

- Don't use content that is likely to be an infringing copy;
- Only use YouTube videos for the purpose of teaching. There should be no commercial benefit.
- Only use what you need;



- Check that you can't purchase or readily license the content that you need from another source; and
- Don't expose the content to further copying or communication, such as giving students access to an electronic file that they could copy.

Can I embed a YouTube video on another website then stream it to my class?

Generally you may embed a link to a YouTube video on another website. In some cases this will not be possible as the uploader of the YouTube video will have disabled this functionality. In this case, you should not pursue embedding the link. The YouTube website provides information on how to embed links to YouTube videos.

Can I download YouTube videos and use them as part of my teaching practice?

Downloading a YouTube video involves making a copy of it. The Flexible Dealing exception in section 200AB of the Copyright Act may permit a copy to be made, however the terms of use on the YouTube website state that the videos are not to be downloaded (i.e. copied). It is unclear whether the YouTube terms of use would prevent a school from relying on s 200AB. There is a small risk that a school might be said to be in breach of contract if it copies videos from YouTube. However, NCU thinks that the better position is that the school would not infringe copyright if s 200AB as set out in the Copyright Act applies.

Relying on s 200AB

For the Flexible Dealing exception in s200AB to apply:

1. No other statutory exception must apply. Most content on YouTube has not previously been broadcast. However, if you are copying material from a Free to Air broadcaster's YouTube channel (eg ABC, SBS) that was previously broadcast eg a news story shown on the nightly news this will be covered [Statutory Broadcast Licence](#).
2. The YouTube video must not be a copy of content that is likely to be infringing. Content is unlikely to be infringing if it is on a YouTube Partner Channel – YouTube has many content partners that provide videos, including National Geographic, BBC Worldwide and Showtime
3. You must be using the video for a specific educational purpose ie you cannot make copies just in case you may need it in the future.
4. Your use must not be for commercial advantage or profit.
5. Your use must not conflict with the normal exploitation of the video eg if the material can be purchased in the required format it must be.
6. Your use must not unreasonably prejudice the copyright owner eg you must not use more than required, you must not allow further copies to be made, access should be limited to only the students who require the content and it should be removed when it is no longer required.

It is good practice to **mark copies** made under the Flexible Dealing Exception with words similar to:

"Copied under section 200AB of the Copyright Act 1968"

For further information, see information sheet '[Flexible Dealing](#)':
<http://www.smartcopying.edu.au/information-sheets/schools/flexible-dealing>



We recommend that you [contact the NCU](#) or your local copyright manager for further advice.

Can I download YouTube videos of Australian free-to-air broadcaster's television programmes (e.g. ABC and other Australian channels)?

Yes, copying material from a free-to-air broadcaster's YouTube channel (eg ABC, SBS) that was previously broadcast eg a news story shown on TV on the nightly news will be covered by the Statutory Broadcast Licence. For more information, see the Smartcopying website at: [http://www.smartcopying.edu.au/copyright-guidelines/education-licences-\(statutory-and-voluntary-licences\)/education-licence-a-statutory-broadcast-licence](http://www.smartcopying.edu.au/copyright-guidelines/education-licences-(statutory-and-voluntary-licences)/education-licence-a-statutory-broadcast-licence) . NCU recommends that where possible it is best practice to provide links to videos on YouTube and to [contact](#) the NCU if you require further information.

Can I format shift a film?

Some limited format shifting **is** permitted under the flexible dealing exception in section 200AB. A school is allowed to format shift copyright material (e.g. a video to DVD or music tape to CD). For more information, see the Smartcopying website at: <http://www.smartcopying.edu.au/information-sheets/schools/format-shifting>. See also [Appendix B](#) for the requirements of section 200AB.

Smartcopying Tips for Films and Video

Don't forget to see [Chapter 1](#) for good Smartcopying tips for film and video content, including information about what students can do with copyright material. You may also wish to see how to find Creative Commons licensed video at: training.instructure.com/courses/1276118/pages/how-to-find-a-cc-licensed-video

9. Copying for Particular Purposes in Connection with Education – Library, Exam and Disability Copying

Background

The Copyright Act has been recently amended to incorporate the provisions of the *Copyright Amendment (Disability and other Measures) Act 2017*. While this manual has referred to some of the new provisions, as arrangements between the collecting societies and the education sector have not yet been settled. There are some new provisions that are mentioned below which deal with use of copyright material in exams, preservation of copyright material by libraries and copying material to assist persons with a disability.

Limited Preservation Copying By Libraries

The new provisions have changed the way libraries can make preservation copies. They consolidate and streamline the exceptions allowing libraries and archives to make copies of copyright material for preservation purposes. Libraries and archives are no longer required to wait until material has been damaged or suffered deterioration before making preservation copies. Libraries and archives



are permitted to make multiple preservation copies, and make available electronic preservation copies to the public without infringing copyright.

<http://www.smartcopying.edu.au/copyright-guidelines/library-and-disability-copying/3-1-library-copying>

Disability Access Exceptions

Copyright Amendment (Disability and other Measures) Act 2017 introduced two disability access exceptions the Organisational Disability Exception in s113F and the Fair Dealing for Disability Exception in s113E.

The organisational disability exception allows schools to make accessible format copies for students with a disabilities, for the sole purpose of assisting those students in a format that they require because of their disability, if the copyright material is not commercially available in the format required by the student. It applies to all copyright material: i.e. text and artistic works as well as audio-visual content such as films and sound recordings and allows schools to copy entire works in certain circumstances.

There is no obligation to mark copies, but NCU suggests that it would be good practice to include the following notice where reasonably practicable:

This material has been copied/made available to you under s 113F of the Copyright Act. Any further reproduction or communication of this material by you may be the subject of copyright protection under the Act. Do not remove this notice

It is permissible to circumvent a technological protection measure (TPM) in order to rely on the organisational disability exception

For further information please see The Disability Access Exceptions section on Smartcopying: <http://www.smartcopying.edu.au/copyright-guidelines/library-and-disability-copying/3-2-disability-access-exceptions> or contact the NCU.

The Fair Dealing for Disability Exception in s 113F permits schools to make “fair dealings” of copyright material for the purpose of providing students with a disability to have access to the content. There are a number of matters to which regard must be had in determining whether the dealing is a "fair dealing".

For further information please see The Disability Access Exceptions section on Smartcopying: <http://www.smartcopying.edu.au/copyright-guidelines/library-and-disability-copying/3-2-disability-access-exceptions> or contact the NCU.

Copying for Examinations

Previously, the exam copying exception allowed schools to include certain kinds of copyright works in *hardcopy* examination papers, but the exception did not apply if the exam was conducted online. Schools are now permitted to use any kind of copyright material in exams regardless of whether they are hardcopy or online exams (including broadcasts, sound recordings and films).



Appendix A - Information about deleting and archiving

Archiving or Deleting Material When It Is No Longer Needed

Clearing out material on a [DTE](#) that is no longer required is one practical way of managing your compliance with the Statutory Text and Artistic Licence and the Statutory Broadcast Licence. This can be done in two ways.

Deleting material

Material that the school no longer requires for educational purposes should be completely deleted. This will assist in minimising the storage burden on the school as well as ensuring that the school is not incurring copyright fees for material it no longer needs.

Archiving material

Material should be archived where the school expects to use the material again for educational purposes in the future. Archiving involves moving the material into a closed area online where it can only be accessed by one person, such as the school librarian, ICT Manager or teacher who uploaded the material in the first place. Restricting access to the material will ensure that the school is not incurring additional copyright fees.

Appendix B - Flexible Dealing - Requirements of Section 200AB

Relying on Section 200AB

Where a teacher decides to rely on section 200AB, they must ensure that their copying:

1. Is a special case

Your use will be a special case where it is narrow in both a qualitative or quantitative sense. This means that you are only using what you need for educational instruction.

2. Is for educational instruction

Educational instruction means teaching (including remote teaching), preparation for teaching, preparing materials for students to use for homework or research tasks, or other uses that are in connection with teaching.

3. Is **not** for commercial advantage or profit

Your use will be commercial where you, your students or your institute are making a profit or gaining a commercial advantage from the use of the material. Cost recovery is likely okay.

4. Doesn't conflict with the normal exploitation of the copyright material

Your use will probably conflict with the normal exploitation of the material where it is possible to purchase a similar resource.

5. Doesn't unreasonable prejudice the legitimate interests of the copyright owner or person licensed by the owner

Your use will prejudice the copyright owner if you:

- a. use more than you need;
- b. interfere with the quality of the material;



c. expose the content to piracy, such as uploading the content to the Internet. Uploading the content to a password protected intranet, blog, wiki or content management system is okay provided students are not able to make further copies; and

d. don't remove the content from the password protected [DTE](#) as soon as practicable after it is no longer required for education instruction.

Access

Access to material copied under section 200AB must be limited. It can only be uploaded onto parts of a password protected [DTE](#) that can be viewed by teachers and students of courses who are directly giving or receiving the instruction for which the copy has been made.

Archiving or Deleting Material When It Is No Longer Needed

Clearing out material on a [DTE](#) that is no longer required is one practical way of managing your compliance with section 200AB. This can be done in two ways.

Deleting material

Material that the school no longer requires for educational purposes should be completely deleted. This will assist in minimising the storage burden on the School as well as ensuring that the school is not incurring copyright fees for material it no longer needs.

Archiving material

Material should be archived where the school expects to use the material again for educational purposes in the future. Archiving involves moving the material into a closed area online where it can only be accessed by one person, such as the school librarian, ICT Manager or teacher who uploaded the material in the first place. Restricting access to the material will ensure that the school is not incurring additional copyright fees.

Labelling

If you make a copy of copyright material in reliance upon the flexible dealing exception, it is good practice to label copies with the name of the material, title of the author or creator, URL address of its location and the date it was copied.

EXAMPLES

COPIED UNDER S 200AB OF THE COPYRIGHT ACT 1968

'BODY PARTS', WWW.ANATOMYGUIDE.COM.AU, 5 AUGUST 2009

COPIED UNDER SECTION 200AB OF THE COPYRIGHT ACT

'LET IT BE', BEATLES, 5 AUGUST 2009

Context Specific Examples

The following examples are intended to illustrate typical section 200AB copying activities which are typically undertaken by teachers.



Copying Sound Recordings from Vinyl, CD or Cassette

A teacher may make a copy of certain content from a CD, record or cassette, for a use directly connected to educational instruction – e.g. in a classroom activity, or for compiling resources for a course research exercise. The copy *can't be made* 'just in case' the content on the CD might be needed at some point in the future – the legitimate use must be known at the time of copying. Teachers should only copy the specific tracks from the CD that they need. The copy should be removed from a [DTE](#) as soon as it is no longer required for the specific educational purpose for which it was created.

Making a Digital Copy of a Film from a VHS

A teacher may make a copy of a film from a VHS tape for a use directly connected to educational instruction – e.g. in a classroom activity, or for compiling resources for a course research exercise. The copy should be made only if the film cannot be purchased in a digital format. The copy should be limited to the amount of the film required for the purpose of the course of instruction, rather than, for example, for the entire institute. It should be placed behind a password protected [DTE](#) and deleted as soon as it no longer required for the specific educational purpose for which it was created.

Online Free-to-Air Television and Radio

Teachers may upload podcasts and webcasts of pay/subscription TV and radio programs onto password protected [DTEs](#) under section 200AB, provided the podcast/webcast can only be viewed by teachers and students in the educational course for which the copy was made.

Copying and Communicating Music

Flexible dealing exception under section 200AB of the Copyright Act allows teachers to use sound recordings of music for free for educational instruction in fairly narrow circumstances, where other exceptions are not available. Common situations where flexible dealing of music might be applicable in Schools include:

- format shifting from vinyl, cassette or CD into digital format such as mp3; and
- uploading sound recordings onto password protected [DTE](#) such as a learning management system provided the digital copy can only be viewed by teachers and students who are directly giving or receiving the instruction for which the copy has been made (i.e. one course as opposed to students enrolled in the entire institute)

Further Information

For more information on section 200AB and what you are allowed to do, see the Smartcopying website at: <http://www.smartcopying.edu.au/information-sheets/schools/flexible-dealing>.

For more information on FAQ's regarding section 200AB, see the Smartcopying website at: www.smartcopying.edu.au/faqs/flexible-fair-dealing.

Appendix C – Glossary of Key Terms

Broadcast includes radio (analogue and digital) and television broadcasts from free to air and subscription providers.



Communicate means making copyright material available online or electronically transmitting copyright material. 'Making available' can include putting material on the internet or intranet. 'Electronic transmission' includes emailing, streaming or electronic reticulation.

Copy includes photocopying, audiotaping, scanning or saving to disc.

Film includes cinematographic films, video recordings, DVDs, television programs, advertisements and music videos .

Performance to the Public includes any mode of visual or aural presentation such as reciting a poem, showing a film (e.g. a video or DVD), playing a sound recording (e.g. a CD), staging a performance of a play, or displaying a diagram or plan on an overhead transparency.

Webcast or streaming refers to the live presentation of information in a continuous (streaming) format delivered through the Internet. A webcast might be associated with other web pages or other web-browser-based content in addition to the live stream.

