

## **Copyright Update for Schools July 2007**

The following contains legal advice and other information for teaching staff about copyright issues relating to:

- The Smart Copying website and the National Copyright Guidelines;
- Copyright survey requirements;
- The use of content management systems and format shifting;
- Use of DVD Shrink;
- Recent changes to the Copyright Act 1968;
- Copying tapes, CDs, Videos and DVDs;
- Enhance TV;
- Lawful Screening of Films and Television Programs in Schools;
- Screening Pirated DVDs in Schools;
- A new edition of Music Copyright for Schools; and
- Use of Creative Commons material.

The information has been sectioned into different pages for ease of distribution to staff.

FOR ALLSTAFF

## 1 Smart Copying Website and National Copyright Guidelines.

Comprehensive information about copyright for schools is now available through the National Copyright Guidelines. These guidelines can be accessed through the Smart Copying website

<http://www.smartcopying.edu.au/guidelines/index.html>

## 2 Copyright Survey Requirements

Schools are now sampled for their electronic use of copyright materials, as well as that photocopied. When participating in a copyright survey, schools will be requested to provide a register of licences which includes the following information:

- Copies of all software licence agreements purchased by the school;
- Websites which the school has paid an annual licence fee to access and use for educational purposes;
- Electronic textbooks and other resources on CD ROMs e.g. Encyclopaedia Britannica, Clip Art (other than Microsoft); and
- Any other copyright works (print or electronic) that your school has purchased and/or individually negotiated rights with the publishers or other copyright owners to use for educational purposes.

It is strongly recommended that schools keep records of these agreements as they are purchased on a centrally managed file.

Teachers should also ensure there is full referencing on downloads and worksheets subsequently created from third party material include that obtained from web sites (cite URL and date).

## 3 The Copyright Amendment Act 2006

The *Copyright Amendment Bill 2006* introduced an important new educational exception for Australian schools that allows Australian teachers to use copyright materials for free in certain circumstances (section 200AB of the Copyright Act).

Below is a summary of the main provisions of the Amendment Act that impact on educational institutions.

### 3.1 Podcasts and Webcasts (s 135C)

The Part VA licence has been extended to include free-to-air podcasts and webcasts. This means that educational institutions can now copy and communicate podcasts, provided that the podcasts originated as free-to-air broadcasts.

### 3.2 Electronic Anthologies (s 135ZMDA)

This section provides that educational institutions can copy and communicate up to 15 pages from any anthology published in an electronic form. This only applies to paginated electronic anthologies.

### 3.3 Flexible Dealing (s 200AB(3))

Section 200AB is different to other exceptions in the Copyright Act because it does not specify exactly which copyright uses will and won't be permitted. Instead, it sets out a number of rules that teachers must use to decide whether a particular use of copyright material will be allowed. This allows copyright laws to be flexible and meet the challenges of new technologies used in schools.

In order to comply, the use must be non-commercial, for educational instruction and:

- be limited to 'certain special cases';
- not conflict with 'normal exploitation' of the work; and
- not 'unreasonably prejudice' the interests of the copyright owner.

The flowchart (3.3.2) illustrates the steps schools must follow to determine whether they can copy material under this new section.

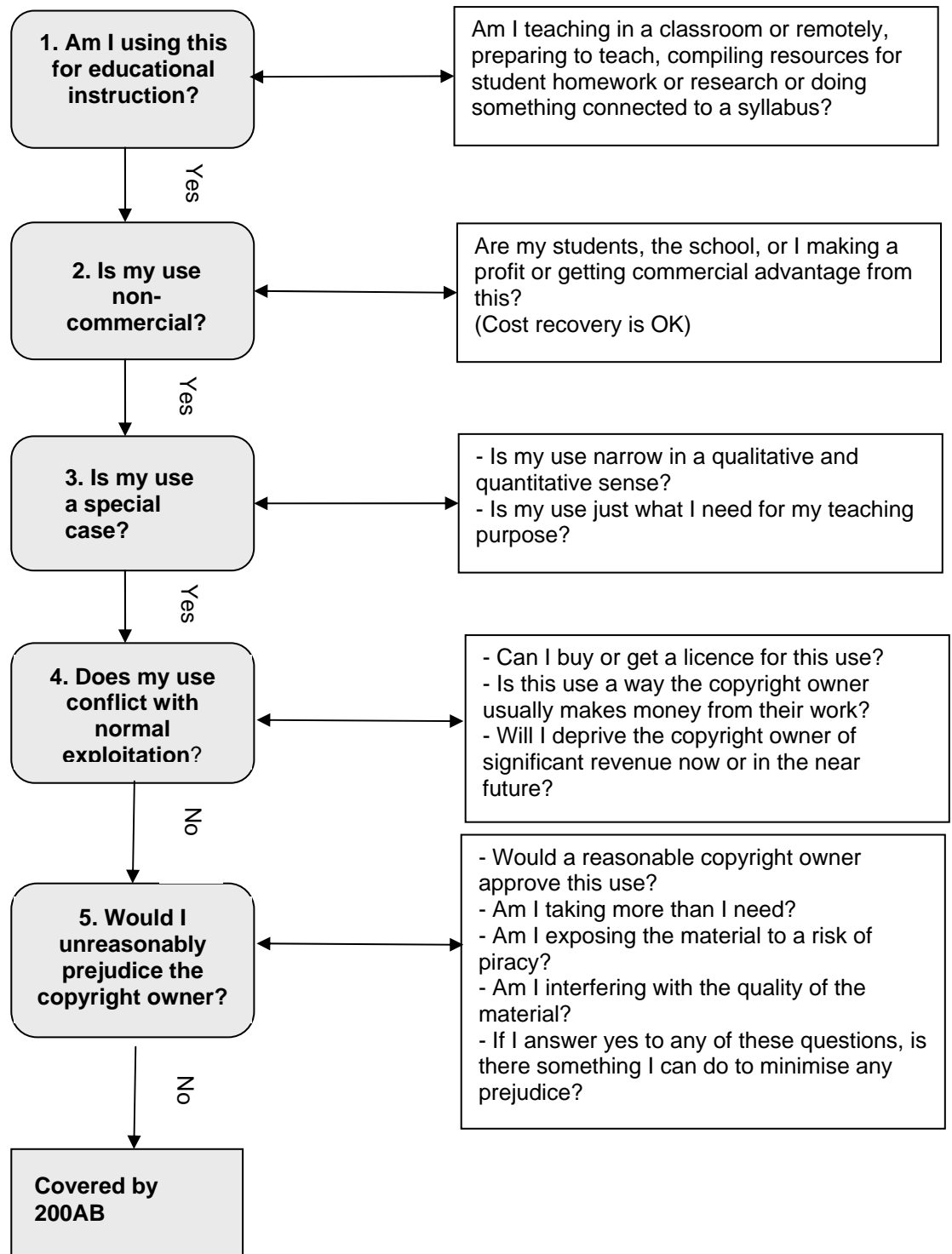
### 3.3.1 Activities that have been confirmed as being able to be used by schools.

Activities that have been confirmed as being able to be used by schools under Section 200AB are:

- Creating a captioned version of DVD for playing to a class that includes hearing impaired students, provided that a captioned version of the DVD is not commercially available.
- converting 8-track or VHS tapes to DVD where it is not possible to buy a DVD of that film
- compiling short extracts of audio-visual material for use in class (such as making a DVD of short extracts of several films for a film or English class) when it is not possible to buy a similar teaching resource
- including short extracts of music in PowerPoint teaching aids
- translating an extract of an Australian novel into French for use in a French language class
- staging a performance of a play on a drama syllabus for family and friends to allow drama students to practice for a performance assessment
- preparing an arrangement of a musical work to perform in a music class.

\*\* These examples assume that the source copy of all materials has been legitimately acquired by the school.

### 3.3.2 Decision Making Flow Chart for Section 200AB



### 3.3.3 Frequently asked questions in relation to Section 200AB

Q: How do I know if my use is for the purposes of educational instruction?

A: Your use will be *for the purposes of educational instruction* if you need to use the material for 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.

Q: How do I know if my use is non-commercial?

A: Your use will be *non-commercial* as long as you, your class, or your school cannot make a profit or obtain some other commercial advantage from your use of the copyright material. This does not stop you from charging a cost recovery charge in relation to the use (for example if you copy material onto discs and you want to charge students the cost of their disc).

Q: How do I know if my use is a special case?

A: This is a requirement that your use of the work be narrow in both size and scope. The more narrow your use of copyright material, the more likely that your use will be a "special case". In other words, using something for a classroom activity is usually going to be a special case. Copying a lot of material "just in case I need it", where you don't know exactly how you are going to use it might not be a special case.

Q: How do I know if my use conflicts with the normal exploitation of the copyright material I want to use?

A: Your use will conflict with the normal exploitation of the copyright work if you copy or use copyright material in circumstances where it is possible to buy the material from the copyright owner (including in a shop or online).

Q: How do I know if my use will unreasonably prejudice the copyright owner?

A: Your use will unreasonably prejudice the copyright owner if it hurts the copyright owner's interests in either an economic or a non-economic sense.

For example, if you expose the copyright owner's work to a high risk of piracy (e.g., uploading a music file to the internet) you are likely to be prejudicing the copyright owner. This might also be the case if you take more of the copyright material than you need (e.g., you copy a whole music CD when you only need to copy 1 song).

A good question to ask is "if I was a reasonable copyright owner, would I want someone to do this to my work"? If the answer is no, there is a high risk that you will be unreasonably prejudicing the copyright owner.

If you are unsure about whether a use is permitted, please contact the Principal Consultant Intellectual Property and Copyright on 08 9229 5255 or email [caroline.brasnett@westone.wa.gov.au](mailto:caroline.brasnett@westone.wa.gov.au)

ALL STAFF WHERE CONTENT MANAGEMENT SYSTEMS ARE BEING USED IN SCHOOL

#### **4 The Use of Content Management Systems to Store Reformatted Material**

The Department has been made aware that some schools are in the process of format shifting:

- entire collections of audio visual and audio and text materials in order to place these materials in a content management system library such as Moodle or Clickview.
- DVDs, which may be protected by Access Technological Protection Measures (ATPMs), into MP4 or other digital files.

Neither activity is permitted under the Copyright Act. The new Copyright exceptions proclaimed in December 2006 do not give Schools a general right to format shift material. Format shifting may only take place in limited circumstances, and only where there is no Access Technological Protection Measure such as a Content Scrambling System (CSS).

Pending further advice from the Department, it is suggested that schools limit their format shifting to Part VA material only. Part VA material includes:

- Free-to-air television and radio broadcasts
- Subscription radio and television broadcasts
- Podcasts of free-to-air television programs

Part VA material does not include Commercial videos or DVDs.

If Schools wish to format shift any other material, they should seek advice from the Principal Consultant Copyright and Intellectual Property on 9229 5255. Note, the Department is not suggesting that Schools should not use other products available through content management systems, such as their content library.

## LIBRARIANS AND TEACHERS OF MEDIA AND INFORMATION TECHNOLOGY

### 5 Use of DVD Shrink

It is necessary to clarify the storage of DVD Shrink on school computers, and the use of DVD Shrink. As such:

- **it is permissible** for schools to own DVD Shrink (including buying it or downloading it from the internet)
- **it is permissible** for schools to store DVD Shrink on a computer (i.e., on an individual computer or personal system drive, not on the school network)
- **it is permissible** for schools to use DVD Shrink for legitimate purposes such as copying film material that is created by the school or students (e.g., to compress a video file of a school football match where the video has been shot by students or staff)
- **it is not permissible** for schools to communicate DVD Shrink (including making it available on the Internet, putting it up on the school intranet or other school network)
- **it is not permissible** for schools to give DVD Shrink to another school or to anyone else (including students)
- **it is not permissible** for schools to use DVD Shrink to copy, format shift or 'backup' commercial DVDs (i.e., remove the CSS that is an ATPM).

The above is irrespective of whether the purpose is for teaching, for making a back up copy or to compress the size of the file for storage on a network or content management system. It is always an infringement to remove or disable an ATPM on a film, irrespective of the purpose.

### 6 Copying CDs, Videos and DVDs;

#### 6.1 Copying an educational resource film on videotape to another format if the initial resource is degrading.

An educational resource film on videotape may be copied to another format if the initial resource is degrading providing that the teacher needs the resource for the purpose of educational instruction and that the school cannot purchase a new copy in the format needed. A school cannot update a degrading resource "just in case", if it could buy a copy of the film in the new format. The school must also ensure that any copying does not circumvent an Access Control TPM.

However, a school library is allowed to copy a film held in its collection in a published form (i.e. on commercial VHS tape) that has been damaged or has deteriorated for the purpose of replacing the original copy of the film, however this must be in the same format.

Note: A library is only allowed to copy films contained in the school's collection. The library cannot borrow material from another school to make a new copy.

#### 6.2 Making a back up copy of an educational resource film to the same format.

Making a back up copy in the same format is not format shifting (transferring from one format to another, such as from VHS to DVD). Generally, a school will not be able to make a back up copy, as the school needs to be making the copy for the purpose of giving educational instruction, not just as a back up.

#### 6.3 Format shifting old language tapes and music.

Schools can copy an old language lesson cassette onto CD where the CD cannot be purchased within a reasonable time.

If a school wishes to format shift copy of music under the new section 200AB e.g. an MP3 file or similar to CD, the school will need to make sure that it is not possible to buy the material in the new format within a reasonable time. You should note that many songs and albums are now available for purchase via online music shops.

A school must never circumvent an Access Control TPM on a CD in order to make a format shift copy.

ALL STAFF THAT COPY FROM TV

## 7 EnhanceTV

EnhanceTV is a web page designed to inform teachers about forthcoming television programs. Teachers can download the free study guides and feature articles from the EnhanceTV online store. Teachers are required to first [join EnhanceTV](https://www.enhancetv.com.au/shop/register.php) (<https://www.enhancetv.com.au/shop/register.php>) as a premium member (the department pays the Screenrights licence for public schools). Membership is free.

As a further initiative, schools can purchase copied videos/DVDs if that they have missed the original broadcast. Purchases from EnhanceTV are not open to the general public, or to countries outside Australia.

There is also a selection of podcasts and RSS feeds available through the website.

Teachers can also enlist for an email service informing of forthcoming programs.

## ALL STAFF THAT SCREEN FILMS/DVD/VIDEOS FOR USE IN CLASS OR ON EXCURSIONS AND CAMPS

### 8 Lawful Screening of Films and Television Programs in Schools

Under the Copyright Act and the arrangements made with film and television producers and broadcasters under Statutory Broadcast Licence (under Part VA of the Copyright Act) schools can:

- Play films, television or radio programs in the classroom (or other teaching venue) or using distance education software, as part of a course of instruction.
- Copy any program screened on television or radio, for example, feature films, documentaries and news and current events for screening in a classroom as part of a course of instruction. Copies can be stored on video tapes, cassette tapes or DVD's or on hard disk. Copies made must be marked in accordance with the requirements of the Statutory Broadcast Licence.
- Communicate the copied program to staff and students via email, intranet, secure website or into classrooms from equipment in a central point (such as the school library) as part of a course of instruction.

#### 8.1 Screenings Outside of the Classroom

To show films for non-educational purposes, films should be borrowed from a licensed lending library or hired from a "non theatrical" film distributor. Otherwise permission must be obtained from the relevant copyright owner or distributor.

The non-theatrical division of Roadshow Films represents many major film companies such as Warner Bros., 20th Century Fox and Buena Vista (Disney). Roadshow Films provides films for school events, fund raisers and so on. Prices depend upon the type of use and expected audience numbers. Roadshow Films Distributors can be contacted on 9204 2617 or (02) 9552 8065 or email: [publicperformance@roadshow.com.au](mailto:publicperformance@roadshow.com.au).

Amalgamated Movies is a non-theatrical distributor which provides films for many organizations including schools. They distribute films by Sony, Columbia, Tristar Icon and Madman films including latest releases. To contact Amalgamated Movies see their website: [www.amalgamatedmovies.com](http://www.amalgamatedmovies.com)

##### 8.1.1 "Rainy Days"

At present there is no arrangement for schools to show films for non-educational purposes in schools, for example, as a lunchtime entertainment or as a "rainy day" activity. Schools can only screen films if they are shown as part of a course of instruction. Students might, for example, be shown the film and asked to write a review of it or undertake a classroom activity based upon the film.

##### 8.1.2 School Excursions

Screenings of films during school excursions, for example, in the coach en route, are not permitted unless the school or the coach company has obtained permission from the relevant copyright owner/s. Check to see whether the coach company has obtained a licence to show films on its buses.

##### 8.1.3 Before and After School Care and Holiday Programs

If a school wishes to screen films (videos and DVDs) during this type of activity it will need to obtain a licence from the copyright owner of the film or the distributor.

#### 8.1.4 Boarding Schools

Screening of a film, for example, on a DVD in a boarding school by students for their own private purposes is permitted. However, to ensure that the purpose of the screening is for private purposes the DVD should be obtained (from legitimate sources) in the name of the student rather than the school.

#### 8.1.5 Fundraising

Films may not be shown for fund raising purposes on school premises by staff, parents or student under the Statutory Licence scheme. To show films for fundraising purposes you must obtain permission from the relevant copyright owner. You can do this by obtaining them from a “non theatrical” film distributor.

#### 8.1.6 Always Obtain DVD's from Reputable Sources

It is essential that films screened in schools are obtained from legitimate sources. Film DVDs, for example, may be purchased or hired from non theatrical film distributors, licensed lending libraries or educational sources for screening on school premises. Screening pirated DVDs puts a teacher, a school, a principal, and the Department at risk of serious civil penalties, which include payment of compensation to the copyright owner, as well as criminal penalties. For this reason, schools should not accept donations or loans of DVDs or videos from students or parents. It is recommended that schools source their own films to ensure that they are not pirated copies.

Staff should not download films from the Internet for showing to students, as there is an extremely high risk that such films are illegal copies.

### 9 Screening Pirated DVDs in Schools

It has been reported that schools may be inadvertently infringing copyright in cinema films by allowing “pirated” DVD versions to be screened on school premises. It is understood that these DVDs have, in some instances, been supplied to schools by students and parents.

DVD piracy is a criminal activity that carries severe penalties. In addition, copyright owners can take action against those who infringe copyright in their films and seek substantial financial compensation for their losses. By allowing this activity on their premises schools, teachers, parents, and students are at risk of serious criminal penalties for DVD piracy.

“Pirated” versions of films have been copied illegally. As a result they typically:

- Have photocopied or poorly printed covers and graphics (they may come in a plastic envelope instead of a normal DVD cover);
- Carry an “ALL” zone region code or no region coding at all;
- Have poor sound and vision quality;
- Have subtitling and/or DVD menu items in a language other than English or in poorly translated English;
- Have discrepancies between the inlay card and the disc;
- Contain more than one film on a disc; and
- Have technical faults – “skipped” frames, freezing during screening or non-functioning DVD menu items.

In addition, genuine DVDs carry copyright and classification notices as well as a list of credits, ownership, licensing information, and the country of manufacture. These are often missing from pirated DVD's. Where they are seen they are often misspelled or deliberately distorted.

ALL TEACHERS OF MUSIC

## 10 Music Copyright for Schools

A new edition of *“Music Copyright for Schools- Guide to the AMCOS, AMCOS/ARIA, and APRA school licences”* is now available at

[http://www.apra.com.au/music-users/downloads/schools\\_2006.pdf](http://www.apra.com.au/music-users/downloads/schools_2006.pdf)

Or alternatively, schools may request hard copies by phoning 9229 5255 or emailing [caroline.brasnett@westone.wa.gov.au](mailto:caroline.brasnett@westone.wa.gov.au)

## ALL STAFF COPYING RESOURCES FROM THE WEB

### 11 Creative Commons Resources for Schools

The Creative Commons provides an alternative licensing system so that authors, musicians and other creators can grant rights to the public to use their work without payment but still retain control over their copyright material. Schools can use Creative Commons resources such as music, film clips, and photographs in their projects and teaching resources free of charge.

It is important to acknowledge both the creator of the works and that the work has been copied under the Creative Commons licence, so that the Department is not charged for their use under the Statutory Licence Scheme by the Copyright Agency Limited.

#### 11.1 Creative Commons and other Open Access -Resources on the Web

**Note to Teachers:** Students should be supervised when searching these databases.

##### Web resources where all material is CC licensed or open access

###### Text

- <http://wiki.creativecommons.org/Books> - CC wiki listing notable CC licensed books
- <http://freewords.org/freepress/> - an artistic project which releases an eclectic mix of writing under CC licensing
- <http://www.austlii.edu.au/> - collection of Australian state and federal legislation, case law and journals. AustLII participates in the [free access to law](#) movement.

###### Images

- <http://www.geograph.org.uk/> - photographs of the British Isles all under CC licences
- <http://openphoto.net/> - a moderated photo community with over 3000 CC licensed photos in various categories

###### Sound

- <http://ccmixter.org> – CC sound remix tool and archive
- <http://www.opsound.com> – CC music archive
- <http://www.magnatune.com> – CC record label
- <http://freesound.iaa.upf.edu/> - collaborative database of CC licensed sounds
- <http://www.artistserver.com/> - music community
- <http://soundtransit.nl/> - archive of “field recordings” from various locations around the world published under a CC Attribution licence

###### Video

- <http://wiki.creativecommons.org/Film> - CC wiki listing notable CC licensed films.

###### Collections

- <http://www.opendoar.org/> - a directory of open access academic repositories, featuring collections

- <http://www.tlrp.org/> - the Teaching and Learning Research Programme supports and develops the UK's educational research to improve outcomes for learners of all ages.
- <http://www.hsdvl.org/> - the Harvard-Smithsonian Centre for Astrophysics, has built an extensive collection of digital video materials supporting science, technology, engineering, and mathematics education reform.