



# Copyright

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## Learning management systems

A guide for WA TAFE colleges



# Copyright



## Learning management systems

### What is a learning management system?

A learning management system (LMS) is software designed to manage and deliver learning content to support classroom, online, blended and distance learning. The information contained in this document also applies to a content management system (CMS), which can include the following general functions:

- copying and storing material from sources external to a TAFE college, such as radio and television broadcasts or the internet;
- uploading and storing content from sources both external and internal to a TAFE college, such as scanned extracts from newspapers, journals or books; photographs; or TAFE-produced content, such as lesson plans or course notes; and
- downloading of content stored on the LMS/CMS by teaching staff and students.

### Copyright issues raised by storing and uploading content on an LMS

TAFE colleges are permitted to place TAFE-owned content and statutory licence content (broadcasts and literary, dramatic, musical and artistic works) on an LMS. For more information see 'Education Licence A: Statutory Broadcast Licence' and 'Education Licence B: Statutory Text and Artist Licence' at [smartcopying.edu.au](http://smartcopying.edu.au).

For all other content (including sound recordings, podcasts and DVDs), TAFE colleges are usually required to obtain a licence from the copyright owner.

Where copying is not automatically permitted by the *Copyright Act 1968*, there are two situations where storage on an LMS may be permitted:

- 1 The material is accompanied by a licence, for example, from Creative Commons, or where terms and conditions state that educational copying is permitted (eg a copyright notice on a web page or accompanying a podcast that says 'free for education').
- 2 Permission is obtained directly from the copyright owner (eg if a lecturer writes a letter to the copyright owner of a document on a website or to the producer of a film, explaining that the TAFE college wishes to store the content on an LMS, and the copyright owner grants permission).

Unless one of these two circumstances applies, it will be a breach of the Copyright Act for a TAFE college to store this type of content on an LMS.

The following table illustrates what type of content is permitted by the Copyright Act to be placed in an LMS.

Type of content	Copies permitted
Apps	Only use in ways permitted by terms of use when app is purchased
Artistic works (eg photographs, scanned cartoons, diagrams or other illustrations)	Yes, under the statutory text and artistic licence, and subject to the copying limitations, ie all of an artistic work sourced electronically
CD-ROMs	Depends on the end-user licence agreement
Commercial DVDs	Most commercial DVDs will be protected by a technological protection measure (TPM). TAFEs are only able to circumvent TPMs to make an additional copy of a commercial DVD under the: <ul style="list-style-type: none"> <li>• flexible dealing exception in section 200AB</li> <li>• organisational disability exception in section 113F</li> <li>• fair dealing for disability exception in section 113E.</li> </ul> See 'Technological Protection Measures' at <a href="http://smartcopying.edu.au">smartcopying.edu.au</a>
Computer games (eg online games, downloadable games, console games)	No, see 'Using applications (apps) in the classroom' at <a href="http://smartcopying.edu.au">smartcopying.edu.au</a>
Computer programs	No, see 'Using applications (apps) in the classroom' at <a href="http://smartcopying.edu.au">smartcopying.edu.au</a>
Dramatic works (eg plays, screenplays)	Yes, under the statutory text and artistic licence, and subject to the copying limitations, ie 10 per cent of the number of pages but if the play is part of an anthology, then up to 15 pages only
E-books	Yes, under the statutory text and artistic licence and subject to the copying limitations, ie one chapter or 10 per cent of pages if original has page numbers or 10 per cent of words if non-paginated

iTunes	Usually no express permission, however, in certain circumstances you may be able to make a copy of content for educational uses under the restricted conditions of section 200AB or the disability exception s 113F. See the PDF 'Format shifting and section 200AB' or 'Flexible Dealing' and 'Disability Access Exceptions' at <a href="http://smartcopying.edu.au">smartcopying.edu.au</a>
Literary works (eg books, web pages, newspapers, journal articles, PDF files of text-based documents)	Yes, under the statutory text and artistic licence and subject to the copying limitations, ie up to one chapter or 10 per cent of pages if original has page numbers or 10 per cent of words if non-paginated
Material owned or created by your TAFE college	Yes
Musical works (eg sheet music, scores)	Yes, under the statutory text and artistic licence and subject to the copying limitations, ie 10 per cent of the musical work.  Note: TAFE colleges will need to organise their own APRA/AMCOS licence to copy entire musical scores
Podcasts	Can be copied under the statutory broadcast licence providing the original is free-to-air and has been previously broadcast (eg iview)
Sound broadcasts (sourced from radio)	Yes, under the statutory broadcast licence
Sound recordings (eg CDs, downloaded music files)	No, not usually, unless your TAFE has the appropriate APRA/AMCOS and PPCA licence. However, in certain circumstances you may be able to make a copy of content under s 200AB for the purpose of educational instruction, where other exceptions are not available. See the PDF 'Format shifting and section 200AB' or 'Flexible Dealing' at <a href="http://smartcopying.edu.au">smartcopying.edu.au</a> for more information
Television broadcasts (including Foxtel)	Yes, under the statutory broadcast licence

## Format shifting

'Format shifting' is a term used to describe transferring content from one technological format to another. It is available in limited circumstances under section 200AB of the Copyright Act. See the PDF 'Format shifting and section 200AB' or 'Flexible Dealing' at [smartcopying.edu.au](http://smartcopying.edu.au) for more information. Some examples of format shifting

include making a copy of a music CD to store on a digital music player, or making an MP4 copy of a DVD.

Note that section 200AB does not give TAFE colleges a general right to format shift copyright material.

TAFE colleges have very limited format-shifting rights. They are not generally permitted to format shift their whole library or collection onto an LMS.

Previously, TAFEs were not permitted to format shift if making the format-shifted copy circumvented a technological protection measure (TPM). However, recent law changes mean TAFE colleges may now circumvent these TPMs in special circumstances, such as when copying under s 200AB or a disability exception. For more information, see 'Technological Protection Measures' at [smartcopying.edu.au](http://smartcopying.edu.au). (iTunes is a trademark of Apple Inc, registered in the United States and other countries.)

“Always consider the cost implications before placing something copied under a statutory licence on an LMS, and have processes in place for removing material when it is no longer required.”

## Copying limits

No copying limits apply to TAFE-owned content.

However, for TAFE resources that contain third-party content, the TAFE college must comply with the rules set out in those statutory licences, otherwise the placement of the content on the LMS will be considered a breach of the Copyright Act. See the PDF 'Copyright Licences' for more information. Or, see 'Education Licence A: Statutory Broadcast Licence' and 'Education Licence B: Statutory Text and Artist Licence' at [smartcopying.edu.au](http://smartcopying.edu.au).

## Keeping records of materials copied

In relation to broadcasts, it is recommended TAFE colleges keep records of material copied and stored on an LMS (eg title and date of the recording) to reduce TAFE liability in case of copyright infringement.

## Notices

When relying on the statutory licences, it is recommended notices accompany any third-party content placed in an LMS or CMS. There is no longer any statutory obligation to include a notice stating that copyright material has been copied/communicated in reliance on either of the statutory licences. Despite this, the National Copyright Unit suggests that it would be good practice to include the 'Section 113P notice' – where this is reasonably practicable – on text and artistic works or broadcasts that have been copied under the statutory licences.

For more information on statutory licences and notices, see the PDF 'Copyright Licences'. Or, see 'Education Licence A: Statutory Broadcast Licence' and 'Education Licence B: Statutory Text and Artist Licence' at [smartcopying.edu.au](http://smartcopying.edu.au).

## Security

The Copyright Act requires TAFE colleges take steps to ensure electronically stored third-party material used under a statutory licence can only be accessed by people entitled to access it. TAFE colleges must protect material stored on their LMS or CMS via a password or other security system.

## Sharing content between TAFEs

In principle, there is nothing to prevent a TAFE college from using a centralised LMS to enable the sharing of statutory licence content across several TAFE colleges, as long as the security rule is complied with. For other types of content, it would depend on the permission obtained from the copyright owner. Note that sharing content used under a statutory licence is not permitted with institutions outside Australia, or for commercial or fee-for-service work.

## Cost implications of placing statutory licence content on an LMS

In general, there will be the cost of:

- the initial copy (called a 'reproduction' under the Copyright Act); and
- the storage on the LMS (called a 'communication' under the Copyright Act).

This means that potentially every piece of statutory licence content stored on an LMS would need to be paid for twice.

## Smart copying principles when using an LMS

When implementing procedures for the use of an LMS, TAFEs may wish to examine some of the following smart copying ideas.

- Consider storing only TAFE-owned, licensed, or Creative Commons material on the LMS.
- Consider providing students with links to web-based resources, rather than downloading material from the internet and storing it on an LMS.
- Investigate whether students may be able to access resources themselves under fair dealing provisions or under the terms of a website licence (eg sites with licences for use in private study), rather than storing content on an LMS.
- Regularly review whether content still needs to be stored on the LMS, or whether it can be taken down.
- Obtain copyright permissions for storage on an LMS for any statutory licence material that the TAFE college wishes to store on an LMS long-term or where more than one part of a work is needed by different TAFE colleges or teaching staff at any one time.
- Always consider the cost implications before placing something copied under a statutory licence on an LMS, and have processes in place for removing material when it is no longer required.

For more information, see 'Copyright in the Digital Teaching Environment: A Manual for TAFE' at [smartcopying.edu.au](http://smartcopying.edu.au).

For more information see the National Copyright Guidelines, available at [smartcopying.edu.au](http://smartcopying.edu.au) or contact [sectorcapability.ip@dtwd.wa.gov.au](mailto:sectorcapability.ip@dtwd.wa.gov.au)

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