



Copyright licences and useful exceptions

A guide for WA TAFE Colleges

There are currently two educational statutory licence agreements that enable teaching staff at WA TAFE colleges to copy and communicate certain types of copyright works for educational purposes.

Under section 113P of the *Copyright Act 1968* (Copyright Act) these licences are:

- the Statutory Text and Artistic Works Licence, administered by collecting society Copyright Agency; and
- the Statutory Broadcast Licence, administered by collecting society Screenrights.

These licences allow for educational use only, that is, such copies cannot be sold for commercial purposes or for profit, used in a private/domestic scenario or to market the TAFE college.

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Statutory Text and Artistic Works Licence

Only educational institutions that have given a remuneration notice to Copyright Agency can rely on the Statutory Text and Artistic Works Licence. All WA TAFE colleges can rely on the Statutory Text and Artistic Works licence.

What the licence allows

The Statutory Text and Artistic Works Licence allows the copying and communication of literary, dramatic, artistic and notated musical works for educational purposes, without needing to seek the copyright owner's permission.

Copies and communications can be made for educational purposes including:

- teaching, for example, making photocopies for a class;
- using for a course of study, for example, uploading content to a learning management system (LMS) for a specific class; and
- making copies for use in a library as a teaching resource.

However, there are limitations on how much can be copied and communicated.

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How much can I use?

In the past, the statutory licence allowed very specific amounts of text works to be copied, often referred to as the '10 per cent or one chapter rule'.

Nowadays the rule is that you must ensure the amount you copy or communicate under the licence 'does not unreasonably prejudice the legitimate interests of the copyright owner'.

This means teaching staff will need to consider whether their use could harm the copyright owner, particularly financially. For example, if a lecturer copies so much of a work that the students or their TAFE does not need to purchase the work when they normally would, then this could be considered harming the copyright owner's interests.

While the statutory licence no longer explicitly sets out how much can be copied, the old '10 per cent or one chapter rule' can still be a helpful guide when determining how much of an in-print or commercially available text work can be copied or communicated.

The old rules allowed teaching staff to copy, for example, up to 10 per cent or one chapter of most texts; all of an electronic artwork; and one article of a magazine, newspaper or journal or more articles if on a similar topic.

Today, instead of being able to automatically copy more articles from a magazine, newspaper or journal if on related topics, lecturers should now consider whether they could be harming the copyright owner's interests by looking at:

- how much of the overall publication they are copying;
- what their intended use is; and
- whether their copying could impact on sales of the publication.

An entire artistic work, such as a photograph or painting may be copied and communicated under the statutory licence.

For more information and examples, see 'The Statutory and Artistic Works Licence' at smartcopying.edu.au.



When can I copy more than 10 per cent of a text work?

Teaching staff may be able to copy a whole text if the work is out of print and not commercially available.

In limited circumstances it may be possible to copy more than the 10 per cent or one chapter of an 'in-print' text if, for example, an ordered textbook did not arrive in time for a class. However, those copies that are more than one chapter should be deleted or destroyed once no longer needed.



Attributing copies

It is recommended best practice that TAFE colleges attribute any third-party material copied into TAFE resources. Attributing will assist Copyright Agency to accurately distribute royalties to copyright owners and ensure the Department of Training and Workforce Development and WA TAFE colleges do not pay to copy material that they own or have permission to use. An attribution should include: author, title, publisher, date of publication, source and URL (where possible). When material is copied under a statutory licence, the attribution should include the words 'Copied under s 113P of the Copyright Act'.

For more information about attributing text and artistic works, see the [Department PDF](#) 'Attributions within course material' and visit 'Labelling and Attributing (TAFE)' at smartcopying.edu.au.



Notice to be attached to communications

In the copyright context 'communication' is the electronic transmission of copyright material, for example, sending material to students via email or placing it on an LMS or TAFE intranet.

Any electronic works copied under a statutory licence and communicated to students and teaching staff should also be accompanied by the following notice:

Warning

This/Some of 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.



Making material available to students in an LMS

Images and text copied under the statutory licence should only be uploaded onto a password-protected LMS and should not be made publicly available (eg published on a public-facing website). 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 delete or archive the material once it is no longer needed.



Statutory Broadcast Licence

This licence refers to broadcasts originating in Australia and not those broadcast in other countries, for example, Indonesia.

Under section 113P, WA TAFE colleges are allowed to copy broadcasts or podcasts and communicate them for educational purposes.

Communication covers:

- emailing copies to teaching staff and students;
- placing copies on a secure internal network; and
- delivering copies by an internal broadcasting system (providing this is only accessible to teaching staff and students).

The broadcasts can be edited to delete unwanted scenes or advertising. Copies of broadcasts cannot be lent to other TAFE colleges. However, a copy can be made and given to another WA TAFE college.

Any content copied under this statutory licence should, as best practice, be labelled and attributed with the following information.

Copied under s 113P of the Copyright Act. [Insert attribution including name of program, channel name, date copied.]

Any program copied under the Statutory Broadcast Licence and communicated to students and teaching staff, should also be accompanied by the same warning notice that is required for the Statutory Text and Artistic Works Licence.



Section 28

Under section 28 of the Copyright Act, TAFE colleges are permitted to perform or communicate a literary, dramatic or musical work and play a film or sound recordings for a class provided:

- it is part of educational instruction and not for profit; and
- the people in the audience are either giving or receiving instruction or are directly connected with the TAFE.

For example, lecturers may project content from a website, stream a YouTube video or music to a class, and even read a play or lyrics to a class.

Section 28 does not allow you to download or copy content. However, you may be able to rely on another exception or licence to do this in certain circumstances.

For more information, see 'Performance and Communication of Copyright Material in TAFE Classes' at smartcopying.edu.au.



Flexible dealing exception in section 200AB

In certain circumstances, WA TAFEs may be able to format shift or copy material under the flexible dealing exception in section 200AB of the Copyright Act, providing the following three conditions are met.

- No other exception or licence can be applied in this situation.
- You wish to use the content for a specific educational instruction purpose.
- Your use is not 'unreasonable', that is, it does not conflict with the normal use of the work or unreasonably prejudice the copyright owner's interests. This means if you can buy or obtain a licence for the material in the format you require, then you must do so instead of relying on the flexible dealing exception.

IMPORTANT NOTE

Whether s 200AB applies must be assessed on a case-by-case basis. If you are considering format shifting material in reliance on s 200AB, we recommend that you contact your TAFE college copyright contact in the first instance and seek further guidance from the Department or the National Copyright Unit as required.

If you can rely on the flexible dealing exception, then you must ensure you only use the amount of material required, for the time required and limit to 'view only' access for the students who require it.

It is recommended, where practicable, to attribute and label content used under the flexible dealing exception with the following notice:

This material has been copied and communicated to you in accordance with the educational use provisions of the Copyright Act. Any further reproductions or communication of this material by you may be the subject of copyright protection under the Act. Do not remove this notice [insert date material copied and made available to students].

For more information on s 200AB, see the [Department PDF](#) 'Format shifting and section 200AB' and visit 'Flexible Dealing Exception' at smartcopying.edu.au.

Pirate copies of film, music and TV

Piracy of film, music and TV programs costs the Australian and international film and music industry many millions of dollars in lost revenue. It is against Australian copyright law and carries severe penalties. Be aware that allowing illegally copied content to be screened may put the college, teaching staff and students at risk of prosecution and penalties. Consider carefully before selecting content for the classroom and do not use material that you suspect could be infringing.

Copying by students

Students may copy content for their own private research and study without the permission of the copyright owner under the fair dealing provision of the Copyright Act.

Students may copy parts and, in limited circumstances, the whole of a:

- literary, dramatic, musical or artistic work;
- sound or television broadcast;
- film or DVD;
- multimedia product;
- computer program; or
- database.

The person undertaking the study and research must be the person doing the copying.

Students are permitted to copy a 'fair' and reasonable portion of literary, dramatic or musical works for research or study. A reasonable portion may be 10% of the number of pages or one chapter if appropriate, as a guide.

For all other works, such as audiovisual material, students should only copy what is necessary in order to ensure their use is 'fair'. Generally, this will be an extract rather than the whole work.

When possible, students should link to material and use material licensed under Creative Commons.

For more information on fair dealing, see 'Students and Copyright' at smartcopying.edu.au.

Copying of students' work

Students will generally own the copyright in their work (unless it was created in conjunction with the educational institution or an employer). Permission should be obtained from the student (or parent/guardian if student is under the age of 18 years) to reproduce their work in any format.

Copying for students with a disability

There are now two free disability copying exceptions in the Copyright Act – the organisational disability exception section 113F and the fair dealing disability exception section 113E. For the purposes of the Copyright Act, disability refers to students that have difficulty comprehending (viewing or hearing) a particular form of copyright material. This includes students with vision impairment, physical difficulties holding a book and learning difficulties such as dyslexia. Students do not need to have a formal diagnosis to rely on these exceptions. See 'Disability Access Exceptions' at smartcopying.edu.au.



Organisational disability exception

The organisational disability exception s 113F allows WA TAFE colleges to make accessible format copies for students with a disability if the copyright material is not commercially available in the format required by the student and with the appropriate features they require.

The commercial availability test means TAFE colleges must establish and be 'satisfied' that the required format cannot be commercially obtained within a 'reasonable time' and price. If not available, then TAFE colleges may copy the content and change it into an accessible format. An entire work can be copied under this exception.

Examples of accessible formats can include creating captions and adjusting image or text size and colour. A technological protection measure (TPM) may be circumvented for this exception.

As best practice, the following notice should be included with content copied under this exception.

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.



Fair dealing for disability access

The fair dealing for disability access exception (s 113E) allows WA TAFE colleges to make 'fair dealing' copies of copyright material for students with a disability. TAFE colleges, however, must first consider if their use is 'fair'. A number of factors must be considered in regard to fairness, including:

- the purpose of the use, for example, if it is for someone with a disability then it is likely to be fine;
- the nature of the material, such as whether it has been published, is available and in print;
- whether the use will impact the possible market value of the material; and
- how much of the material is being used and/or the number of copies being made.

In deciding which disability exception to rely on, TAFE colleges should consider whether the fairness factors or the commercial availability test best fits their use. Generally, if using an entire work, TAFEs may be more likely to rely on the organisational disability exception s 113F. If using a small amount of a work, then it may be more likely that fair dealing s 113E is suitable. See 'Disability Access Exceptions' at smartcopying.edu.au for more information.

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Exam copying exception, section 200(1A)

TAFE lecturers may copy and communicate any copyright material for use in online and hard-copy exams for student assessment. This exception applies only to exams and tests that are assessable components of the course.

Types of material that can be copied under the exam exception include text, artistic works, video, musical works and sound recordings.

It is best practice to attribute any third-party content included in an exam. The National Copyright Unit also recommends using the following notice for online or take-home exams.

This material has been copied [and communicated to you] in accordance with the exam copying exception in s 200(1A) 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.

For more information, see 'Exam copying' at smartcopying.edu.au.



TAFE music licence

WA TAFE colleges can rely on a voluntary music licence with APRA, AMCOS, ARIA and PPCA, the collecting societies representing music composers, publishers and recording companies.

Consequently, lecturers can perform musical works live and use sound recordings in various ways in and outside the classroom.

Here are some examples of how WA TAFEs can use music under the licence:

- performing a live musical work or recorded music at TAFE events, for example, a band playing at an open day or sound recording at a fashion show;
- playing background music in TAFE businesses or workplaces;
- creating a sound recording for a TAFE event, for example, making a compilation of songs;
- using a sound recording in another work, for example, adding music to slides; and
- live streaming an event in which a musical work is performed or sound recording played.

For more information, see the [Department PDF](#) 'Using music for educational instruction' and visit 'TAFE Music Licence' at smartcopying.edu.au.