

Copyright Amendments 2006

Key changes affecting the University, staff and students were brought about to the Australian Copyright Act ("Act") in late 2006 effective from 1 January 2007. Some of the important changes are:

1. **Personal use exceptions:** New personal use exceptions for Time-shifting and Format-shifting have been added which legalise ripping CDs to your iPod and recording TV for watching later.

Time-shifting exception - Personal use

Previously only live-to-air broadcasts (e.g. sports, news) could be recorded by individuals without infringing copyright.

The Act now permits a person to make a film or sound recording of a broadcast: (a) in domestic premises; and (b) solely for private and domestic use by watching or listening to the material broadcast at a time more convenient than the time when the broadcast is made.

The recording must not be sold, hired, traded, distributed or played in public, but may be lent "to a member of the lender's family or household for the member's private and domestic use".

The copy of a program is not for the purposes of making 'library' copies to be retained indefinitely and viewed repeatedly.

ECU note: This exception is for personal, domestic use only. This should not be confused with making recordings of broadcasts already allowed under the Part VA Screenrights Licence. A staff who wishes to use recordings of broadcasts for teaching purposes must label the tape/disc correctly for periodic recordkeeping purposes.

Format-shifting exceptions - Personal use

Permits the owner of a: book, newspaper or periodical publication, photograph, sound recording, videotape to make a single reproduction in a different form for his or her private and domestic use.

Multiple copies are not permitted, except as is necessary for the technical process of making the copy.

The copy may not be sold, hired, traded, distributed, or displayed in public, but may be lent "to a member of the lender's family or household for the member's private and domestic use".

If the original item is sold, given away or destroyed, then the copy should be destroyed.

(This exception excludes sound recordings which have been downloaded over the Internet as a digital recording of a radio broadcast or similar program e.g. 'podcasts'.)

ECU note: This exception is for personal, domestic use only. It does not apply in general for teaching purposes or for 'fair dealing for the purposes of research or study'.

2. **Use of copyright material for certain purposes:** A new flexible US-Fair Use style exception allows for broader uses of copyright material. (s 200AB). This section provides a flexible exception to enable copyright material to be used for certain socially useful purposes.

For example: An educational institution that wishes to continue using a teaching resource held in a form which has become obsolete and is not commercially available in a form appropriate for contemporary teaching technology.

Note: This section does not apply if other specific exceptions and statutory licences apply.

3. **Fair dealing for parody or satire:** A new Fair dealing exception has been added for parody or satire.

Amendments now allow explicit exceptions for the purpose of parody or satire. However moral rights may still need to be considered, particularly if distorting or denigrating artistic works.

s 41A A fair dealing with a literary, dramatic, musical or artistic work - for the purpose of parody or satire.

s 103AA A fair dealing with an audio-visual item - for the purpose of parody or satire.

4. **Fair dealing for research or study**

s 40 permits individuals to make 'fair dealings' of literary, dramatic or musical works for the purpose of research or study.

Articles in Periodicals

Sub-s 40(4) now specifies that more than one article from the same periodical may be reproduced UNLESS they are reproduced for the purpose of different research or a different course of study.

Reasonable portion

The Fair dealing exception for research or study has been clarified, with regard to the definitions of 'reasonable portion'. For the purposes of determining a 'reasonable portion' for works (other than articles in periodicals) for fair dealing, the following definitions have been added explicitly to s 40:

Item	Work or adaptation	Amount that is a reasonable portion
1	A literary, dramatic or musical work (except a computer program), or an adaptation of such a work, that is contained in a published edition of at least 10 pages	(a) 10% of the number of pages in the edition; or (b) if the work or adaptation is divided into chapters—a single chapter
2	A published literary work in electronic form (except a computer program or an electronic compilation, such as a database), a published dramatic work in electronic form or an adaptation published in electronic form of such a literary or dramatic work	(a) 10% of the number of words in the work or adaptation; or (b) if the work or adaptation is divided into chapters—a single chapter

5. **Copying by libraries for preservation/replacement**

New sub-s 51A(4) permits reproduction of a published work for preservation or replacement purposes, notwithstanding that a later edition of that work may be commercially available. (copying is appropriately limited under this section to only administrative purposes).

New sub-s 51A(6) adds a definition of 'administrative purposes' as meaning "purposes directly related to the care and control of the collection.

'administrative purposes' would include educating and training staff and volunteers in relation to activities directly related to the management of the collection of the library or archives. The definition would not cover reproduction to merely add to the collection of the library or archives so more copies are available for users.

6. **No liability for accessing communications**

This amendment is designed to remove any doubt that by merely accessing a communication, for example, clicking on a hyperlink on a website, or opening a file transmitted to the person by email, the person browsing or receiving the file may be responsible for the communication.

This amendment protects you if you click on a link or open an attachment, not realising that the content is infringing.

It does NOT protect you if you then forward it on to someone else. Similarly, this protection should not be confused with the potential liability for providing links to infringing material.

Recent court cases in Australia have highlighted that website providers who direct users to infringing material by providing direct hyperlinks are guilty of promoting and authorising infringement, even when they do not host the infringing files on their own website.

Cooper v Universal Music Australia Pty Ltd [2006] FCAFC 187 (18 December 2006).

7. **Videoconferencing copyright material**

s 28 provides an exception whereby literary, dramatic and musical works, films and sound recordings could be performed in the classroom without infringing copyright and with no remuneration payable.

New s28A (5) amends this section to explicitly include classes conducted via live videoconferencing.

The communication must be in the course of educational instruction and the audience must be limited to persons who are taking part in the instruction or are otherwise directly connected with the place where the instruction is given.

This new exception is for live classroom use only.

It does NOT provide an exception for recording lectures with copyright content for later use.

As per previous advice, only Screenrights recordings of television broadcasts may be taped as part of a lecture, or made available online in full.

8. **Copying podcasts of broadcasts under Part VA**

New s 135C extends the statutory licence in Part VA to facilitate the use by educational institutions of free-to-air broadcast material from online sources made available by broadcasters in the same way that Part VA currently permits copying and communication of broadcasts.

Note: Content created exclusively for the internet, which has never been broadcast free-to-air in Australia, is outside the scope of the Part VA statutory licence.

9. **Insubstantial parts of works in electronic form**

Previously the Act allowed the making of multiple reproductions of insubstantial parts of hard copy, literary or dramatic works, but now it ensures that these rules also apply to the reproduction of insubstantial parts of works in electronic form.

- The insubstantial parts still follow these rules:
- No more than 2 pages or 1% of the number of pages.
- No more than 1% of words if work is not paginated.
- No dealing with another part within 14 days.
- No putting another part online at the same time.

It is still the intention of the Act that this exception is not used to provide a significant portion of the work in small pieces every 14 days to avoid remuneration under Part VB.

10. **Electronic anthologies & Active caching**

Electronic anthologies

The Act now ensures that the treatment under Part VB of anthologies in electronic form and those in hardcopy form is consistent. The published electronic form of the anthology from which the reproduction or communication is done, must be able to be paginated; and the work copied is no more than 15 pages.

Active caching for educational purposes

- New amendments provides for active caching on a server for educational purposes.
- The cached material must be password protected, and must not be retained beyond the minimum period for the particular course of study.

11. **Circumvention of Technological protection measures (TPMs)**

Libraries and Educational Institutions

1. Amendments provide an exception if the TPM is circumvented for the sole purpose of making an acquisition decision in relation to the work or other subject matter; and the work or other subject matter will not be otherwise available to the person when the act is done.
2. New provisions provides an exception if the TPM is circumvented for the sole purpose of a library or educational institutions lawfully performing their functions – this includes for the purpose of exercising their rights pursuant to Part VB of the Act. For example, a ‘reasonable portion’ of a work may be extracted from a password protected work, for the purposes of reproduction or communication pursuant to Part VB of the Act to students.

Interoperability

New sections provides an exception if the TPM is circumvented for the sole purpose of achieving interoperability of an independently created computer program.

The effect of these amendments is to clarify that the exception for interoperability applies only where the elements of the computer program that is the subject of circumvention will not be readily available to the person exercising the exception at the time of circumvention.

Computer security testing

New amendments provides an exception if the TPM is circumvented for the sole purpose of testing, investigating or correcting the security of a computer, computer system or computer network, AND is done with the permission of the owner of the computer, computer system or computer network.

Encryption research

New amendments provide an exception if the TPM is circumvented for the sole purpose of identifying and analysing flaws and vulnerabilities of encryption technology by a person or employee who is:

- (i) engaged in a course of study at an educational institution in the field of encryption technology; or
- (ii) employed, trained or experienced in the field of encryption technology;

AND

- (i) has obtained permission from the owner or exclusive licensee of the copyright to do the act; or
- (ii) has made, or will make, a good faith effort to obtain such permission.

In this subsection, encryption technology means the scrambling and descrambling of information using mathematical formulas or algorithms.

Note: Staff may get general information about Copyright provisions from university copyright website <http://www.ecu.edu.au/GPPS/copyright>

Alternatively staff may contact Donald Frayne the University Lawyer for assistance on copyright issues:

Telephone: 6304 2016
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