

Copyright (in schools) Today

(a mix of old and new)

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Introduction

Despite new technologies and digital resources making up an ever increasing amount of educational materials schools are accessing, our approach to copyright in schools remains bound by the realities of licensing. However, recent legislative changes belatedly recognise the need for flexibility in copyright law in response to a digital world.

A few basics

- Copyright = protection of ownership over a type of property, in this case, *intellectual* property.
- Permission is required to utilise someone else's property.

Slide 5.

A 'copyright' handle

Licence is everything and everything is licenced

'Copyright' is quite straight-forward. It is the licensing issues that make for confusion.

No Free Use for Education; You need permission, i.e. a licence, to use copyright materials in school. 'Educational purposes' is not a free-pass to copyright materials. It is simply a licence category.

Slide 8.

What about Fair Use?

Fair Use comes from US copyright law and is not applicable in Australia. The Australian Government is currently looking at the question of making more flexible copying allowances in the Copyright Act including a Fair Use style exception. If adopted, it will operate very differently from the US model.

Slide 12.

Fair Dealing

Fair Dealing is the correct term for Australian copyright law, and it refers to a limited number of activities that users of copyright works can undertake without needing permission or a licence first.

Fair Dealing for research or study will be the main interest for schools although the new practical fair dealing disability provisions will also be of significant interest. Fair dealing for research or study refers generally to the research or study by an individual and covers the copying done by students themselves for their work, but also anyone else for their own research or study.

Slide 15. Student Copying:

Fair Dealing for research or study has a number of considerations that should be made by the user in order to determine if their use is going to be 'fair'. Some of these considerations will be difficult for the average student to understand. It will generally be sufficient if students follow three principles:

- Copy as little as needed. 10% is deemed to be fair by the Act and students should be encouraged to stick to that where they can.
- Reference materials.
- Further enquiry regarding permission will be needed if a student uses their work outside of school as the use will no longer be 'research or study'.

Slide 18. Referencing

Reasons why we reference copied materials:

1. It satisfies copyright: it is a requirement to reference material. Not to do so is a breach of the author's moral rights. It is also often a condition of a licence being relied upon.
2. It identifies the material and where it came from: If you don't know where material came from how do you know if you can use it?
3. Shows evidence that the material has been lawfully used, and that you are not claiming authorship of that material; and
4. Shows if and how that material can be used again, and assists in reporting during copyright surveys.

It also avoids the creation of 'orphan works' that can't be traced to an author or source.

An illustrated list of referencing examples can be found on the Smartcopying website at:

<http://www.smartcopying.edu.au/information-sheets/schools/attribution-of-text-and-artistic-works-schools>

Slide 23. Using copyright materials in class requires

- Permission;
- Acknowledgement;
- Knowledge of, and compliance with limits;
- Compliance with other conditions such as access restrictions, labelling and warning notices to users.

Slide 24. Permission usually means limits

Few permissions or are entirely blanket, free licences. Most of the common licences have conditions and must be adhered to in order to retain the benefit of the licence granted. Even open, free licences have conditions; it's just some have very few conditions.

Licences for Schools

Slide 26. Exemptions

Exemptions are essentially licences provided in the Copyright Act. Exemptions are limited in what copyright works they cover and what you can do with them.

S28 allows the playing or performing in class of a copyright work for instruction, e.g.

- a film
- recorded music (from a CD)
- multimedia resource
- a musical piece (played by a student)
- a play
- a poem

S200 allows any copyright work to be included in an exam or in the answer to an exam. This doesn't extend to using exams as study or practice.

S200AB 'flexible dealing for education' provides some flexibility for the purposes of education where an exemption or licence doesn't exist and where the proposed activity doesn't negatively impact the interests of the copyright owner.

More details: <http://www.smartcopying.edu.au/information-sheets/schools/flexible-dealing>

Slide 27. Statutory Licence under s113P

This new provision in the Act replaces the old statutory licences under Part VA, Screenrights licence for copying TV and Radio broadcasts, and Part VB, the Copyright Agency licence for copying text and artistic works in hardcopy and digital form. Both Part VA and Part VB have been repealed and replaced by a single section s113P under which both licences now sit in a more simplified form.

Slide 28. Educational Purposes

The statutory licences apply to 'educational purposes' only:

- Teaching purposes
- Used as part of a course of study
- Retained for library use as a teaching resource

Slide 30. Statutory Broadcast Licence

The Broadcast licence conditions are generally straight-forward.

- It covers any broadcast material on TV or Radio, Free-to-Air and Cable networks and their catch-up services.
- Copies can be made directly from TV or Radio, or obtained from Clickview and similar services
- It doesn't include subscription streaming services via the internet, such as Netflix.
- It doesn't include internet radio content.
- It doesn't include identical content available from any other source such as a DVD.

The licence is permissive and copied content can be used for any activity providing;

- Access is restricted to Staff and Students of the school only, and
- Labelling and warning notices are complied with.

More details: [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)

Slide 32. Statutory Text and Artistic Licence

- Covers hardcopy and electronic sources of text and artistic works
- applies different limits to different types of sources and different types of works
 - e.g. different copying limits to textbooks, articles, a poem or short story, an artistic work, musical work, depending on the source and whether hardcopy or electronic.
- 10% / 1 chapter rule will for most uses of text works by teachers
- artistic works published on the internet can be copied without any other considerations.
- Access is restricted to Staff and Students of the school only, and
- Labelling and warning notices apply

Note: Proper referencing, labelling and warning notices are part of the licence conditions.

More details: [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)

Slide 34. Music licences

Licences provided by agreement directly between the music copyright societies and the Department.

- The three licences cover most activities schools use music for.
- For educational purposes as well as non-educational purposes.
- Only photocopying of sheet music is allowed – no digitisation. Different limits apply to primary and high schools.
- For student school performances, Grand Right Works are not covered, nor are Choral works of more than 20 minutes.
- Tickets to concerts can be sold for profit, but not recordings of the performances (cost-recovery only).

Music General: <http://www.smartcopying.edu.au/information-sheets/schools/performing-and-communicating-music-in-schools>

Performing Music : [http://www.smartcopying.edu.au/copyright-guidelines/education-licences-\(statutory-and-voluntary-licences\)/education-licence-c-apra-licence](http://www.smartcopying.edu.au/copyright-guidelines/education-licences-(statutory-and-voluntary-licences)/education-licence-c-apra-licence)

Reproducing and Recording Music: [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)

Sheet Music: [http://www.smartcopying.edu.au/copyright-guidelines/education-licences-\(statutory-and-voluntary-licences\)/education-licence-d-amcos-licence](http://www.smartcopying.edu.au/copyright-guidelines/education-licences-(statutory-and-voluntary-licences)/education-licence-d-amcos-licence)

Music FAQ: <http://www.smartcopying.edu.au/faqs/musical-works>

Slide 35. Roadshow Film Licence

Allows schools to show films for entertainment, from any purchased film such as a DVD or purchased Digital download (iTunes copy), but not from a streaming source such as Netflix. Conditions are strict and include no fundraising or charity association; no advertising outside of students and staff; audience is limited to students and staff (includes parents in a supervisory role); screening must not be visible by the public.

Slide 36. Blackline Masters BLMs

- No 'standard' blackline master licence.
- Most BLMs are hardcopy only and allow photocopying only.
- BLMs are usually licenced to an individual teacher or to the school.
- If no licence details, copy under the s113P Statutory Licence.
- Some internet materials may be called BLMs, but are often just worksheets of various kinds.

Digital Technologies

Slide 38. Licence Fragmentation

Until the last decade or so a few traditional licences available to schools have covered most of the sources of copyright materials required for educational purposes.

What has emerged with digital resources recently though is a trend for publishers to licence individual products or services published under specific terms directly to schools and individuals. This has increased the number of licences we need to consider, and the different terms and conditions each licence applies to its product.

Slide 40. Licence is everything... and everything is confusing!

For example, the same work – a movie – can be found from TV, a DVD, and Netflix. But how we can use that movie in school depends on the licence we are accessing it through...

<i>Source of Movie</i>	<i>What can I do?</i>
Copy of a TV broadcast	Show in class, copy multiple times, send copies to students, edit, modify; both by teacher and students
DVD	Play in class for entertainment or education (but no copying).
Netflix	May play in class for educational purposes only

Slide 41. Licence vs Copyright

The rise and rise of individual product licences has prompted a review, currently under way by Government that is considering the question of whether a provision in the Copyright Act overrides a condition in a licence, especially where that licence seems to restrict access or activities where the Copyright Act allows them. Early signs are that Government will enact changes to the Act to make clear that a contract cannot extinguish an exemption made for a specific audience or purpose.

Slide 42. Digital Product Licences

These are usually the long-winded documents of the kind you prefer to just accept on the first page and move on. However, it will be in these documents you'll find exactly what you can and can't do with the product or service licenced to you or the school.

Common examples of these kinds of products include Netflix; iTunes; Stock photos; Clickview; Textbooks; Apps, etc. (Note, not all of these can be licenced to schools). Most

products that are licenced to schools provide fairly generous conditions to use those materials, but cost is often high.

Slide 44. Websites and Terms of Use

Websites can be copied under the Statutory Text and Artistic Licence, but check the website's terms of use as they are often more generous for educational uses than the statutory licence.

If a website has any of the terms below it will allow for copying for educational purposes.

- Non-commercial use
- Use in your organisation
- Personal or non-commercial use
- Educational use
- Free copying

If the website has any of the terms below it will not allow for copying for educational purposes but can still be copied under the statutory licence.

- Personal use
- Personal and non-commercial use
- Personal, non-commercial
- Copying not permitted

More details: <http://www.smartcopying.edu.au/information-sheets/schools/understanding-website-terms-and-conditions>

Slide 47. YouTube

In the first instance, terms of use will prevail for YouTube as there is no statutory licence or general exemption for audio visual material. YouTube's terms of use prevent copying unless permitted by the owner. Anticipating the Government's likely position on contract override, there are a couple of possibilities for copying YouTube content where owner permission is absent.

Slide 48. YouTube (s113P)

If the material is broadcast content previously broadcast on TV and hosted on YouTube by a broadcast TV channel such as 7, 9, 10, ABC, etc., it can be copied under the Statutory Broadcast Licence.

Slide 49. YouTube (s200AB)

It is possible to rely on s200AB but the conditions are tricky and requests should be forwarded to the Principal Consultant Intellectual Property and Copyright.

Slide 50. YouTube (s28)

You can play YouTube videos directly from YouTube in class for educational purposes.

YouTube videos

* contact PCIP&C for advice under s200AB

Activity	Extract of an Australian free-to-air Broadcaster's Television Program on YouTube	Other YouTube Videos*
Can I download a YouTube video?	Yes, under s113P Statutory Licence provided that: - the copy is made solely for educational purposes; - the video is of an Australian free-to-air broadcast; and - the video has been hosted by the broadcaster.	Yes, under the s200AB Flexible Fair Dealing Exception provided that: - The YouTube video is not likely to be an infringing copy. - You are using the video for the purposes of giving educational instruction. - Your use is non-commercial. - The circumstances of your use is a special case. - Your use does not conflict with the normal exploitation of the video. - Your use does not unreasonably prejudice the copyright owner.
Can I convert YouTube videos into a different format in order to download them?	Yes, provided that you do it yourself	Yes, provided that you do it yourself
Can I show a YouTube video file directly from YouTube in class?	Yes, under s28, as long as it is for the purposes of educational instruction.	Yes, under s28, as long as it is for the purposes of educational instruction.
Can I upload a YouTube video file to the School intranet or Content Management System?	Yes, under s113P Statutory Licence as long as it is being used for educational purposes.	Yes, under the s200AB Flexible Fair Dealing Exception provided that: - The YouTube video is not likely to be an infringing copy. - You are using the video for the purposes of giving educational instruction. - Your use is non-commercial. - The circumstances of your use is a special case. - Your use does not conflict with the normal exploitation of the video. - Your use does not unreasonably prejudice the copyright owner.
Do I have to destroy copies of YouTube video files after use?	No	No

Slide 51. Subscription music and films

Films and music from sources like Netflix and iTunes, can be played from a teacher's personal account in class for educational purposes under s28. No copying or downloading is allowed.

Slide 52. eBooks

eBooks can be copied under the Statutory Text and Artistic Licence. 10% of the words or 1 chapter can be copied and used for educational purposes in accordance with the licence conditions. Under the statutory licence, Artistic works from an eBook can be copied in full without further enquiry.

Slide 53.

3D Printing

3D printing is most likely to affect artistic works or designs. A 3D print is a reproduction or copy.

Some designs will come pre-licensed such as from Thingiverse. The licence terms will control what you can do with the print.

In other circumstances copyright applies as with any artistic work. If the design is from the internet, it can be copied under the Statutory Text and Artistic Licence and should be treated the same way as any copy made under the licence. Use of the print beyond school takes it out of the statutory licence and permission will need to be sought from the copyright owner.

Open Resources

There is a growing online presence of resources being made available under conditions that deliberately avoid complicated copyright licensing.

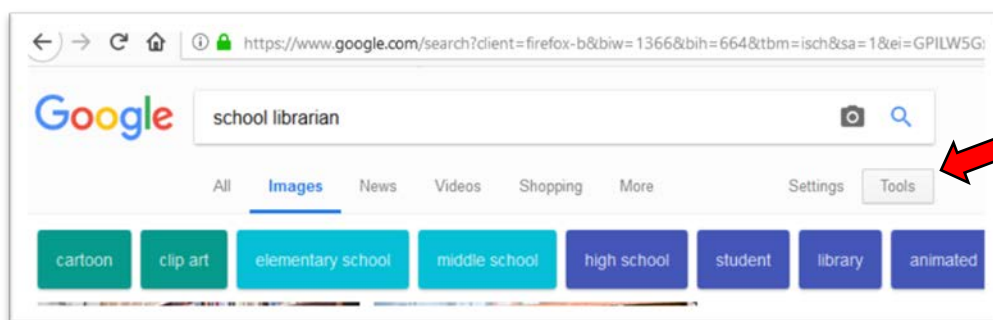
Slide 55.

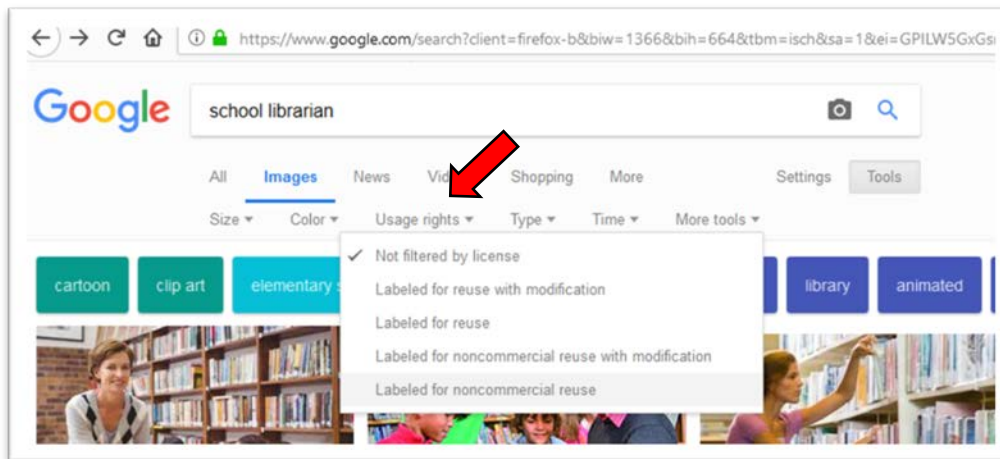
Open Images

Probably one of the most useful types of open resources are images. A number of websites provide open images suitable for educational use including:

- www.publicdomainpictures.net
- www.splitshire.com
- www.pexels.com
- www.pixabay.com
- www.1millionfreepictures.com
- www.viintage.com
- www.gratisography.com
- www.pdpics.com
- www.flickr.com/photos/britishlibrary/
- www.pickupimage.com
- www.publicdomainarchive.com

To avoid permission issues or the conditions under the statutory licence use the appropriate filter in the tools when doing image searches on the internet. Full acknowledgement is best practice for even if the source doesn't require it.





More details: <http://www.smartcopying.edu.au/faqs/artistic-works-and-photographs>

Slide 56. Creative Commons

Creative Commons used to be one of the go-to licences for open resources. They are now one of many types of licences making materials suitable for educational use. There are six CC licences and all are suitable for reproduction without modification for educational use. Some of the six allow modification as well.

More details: <http://www.smartcopying.edu.au/information-sheets/schools/creative-commons-a-quick-overview>

Slide 57. Out of Copyright or Public Domain

Materials that are out of copyright because of their age, are not protected so can be used any way you want. Moral rights requiring attribution do not expire, and for administrative purposes previously discussed, it is best to reference all works reproduced. Project Gutenberg Australia is one of the better-known sources for out of copyright works. Overseas repositories will operate under different copyright regimes so beware. Some people release their work into the 'public domain'. This is more a licence or statement that the owners are not intending to defend their copyright and you are able to use it for any purpose.

Slide 58. Recent Changes to the Copyright Act

The following fixes have been made to a number of inconsistencies and impracticalities that have existed in the Copyright Act for some time.

Slide 59. Disability Provisions

New Disability Access provisions under s113E and 113F.

- Disability is defined broadly as *“a disability that causes the person difficulty in reading, viewing, hearing or comprehending copyright material in a particular form”*.
- Allows an access copy of a work to be made to assist a person with a disability.
- Providing no commercial copy in the form required is not available for purchase.

More details: <http://www.smartcopying.edu.au/copyright-guidelines/library-and-disability-copying/3-2-disability-access-exceptions>

Slide 60. Technological Protection Measures (TPMs)

There are 2 types of TPMs:

- Access Control such as password or time-limited access
- Copy Control such as encryption software on a DVD or music CD
- There is a prohibition on circumventing Access Control TPMs, but not when copying under a statutory licence, s200AB or disability access.
- No prohibition on circumventing a Copy Control TPM providing you do it yourself.

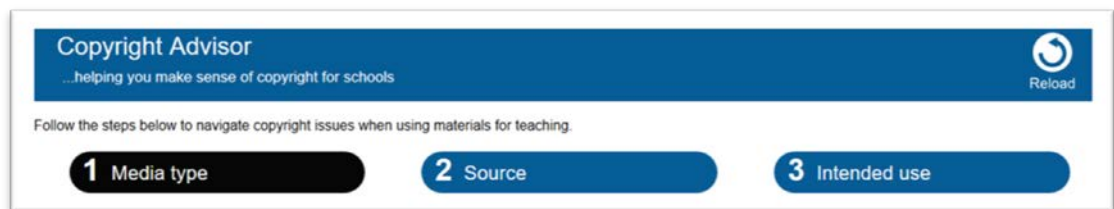
Slide 62. Library Provisions

- (new) s113H preservation copying of content already in a Library's collection
- (new) s113J Copying for research carried out at the Library
- s49 Copying at request of a student for research or study (10%)
- s50 Interlibrary loan copying

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

Slide 63. Copyright Advisor

Created by the Department as an online help tool to help teaching staff connect the dots and arrive at the relevant copyright information they need for their particular teaching scenario.



Copyright Advisor (requires DOE login):

<http://ecm.det.wa.edu.au/connect/resolver/view/CPY12T000/latest/index.html#/>

Other links:

Pirate films: <http://www.smartcopying.edu.au/information-sheets/schools/screening-pirated-dvds>

Smartcopying Website: <http://www.smartcopying.edu.au/>

Queries:

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