

Monash University

**Copyright Guidelines
Audiovisual materials**

(Last revised May 2007)

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MONASH UNIVERSITY

Copyright Guidelines: Audiovisual materials

Failure to follow these guidelines could lead to copyright infringement action.

These guidelines provide information about copyright. They are not comprehensive. Further advice should be obtained from the [Copyright Adviser](#) if particular questions concerning copyright arise.

The guidelines are in three sections:

1. What does copyright cover?
2. Exceptions allowing use of copyright material without infringement.
3. The Part VA statutory licensing scheme for copying and communicating broadcasts in Universities.

What does copyright cover?

Material protected by copyright is divided into two broad categories of subject matter: **works**, and **subject matter other than works**. Material copied from television or radio broadcasts will usually contain several types of subject matter, some categorised as 'works' and some as 'subject matter other than works'.

Works

The category of **works** is further divided into:

- **literary works** (i.e. text, including monographs, periodical articles, reports, computer programs, poems, lyrics)
- **dramatic works** (i.e. text, specifically plays)
- **musical works** (written music)
- **artistic works** (i.e. graphics, including images, photographs, diagrams, cartoons, illustrations, maps, graphs).

For a work to receive copyright protection it must be 'original' and it must be 'reduced to material form'.

The originality requirement requires only that the author of the work has used some skill, ingenuity and labour in making the work; not that the thought or idea embodied in the work be novel or new. Copyright protects the expression of the thought, not the originality of the thought or idea.

Until a work is 'reduced to material form', there is nothing for copyright protection to attach to. A speech given extempore, for example, would not attract copyright protection. A written speech, on the other hand, would be protected as a literary work.

Subject matter other than works

The category of *subject matter other than works* is divided into:

- **sound recordings** (eg music CDs and other recordings)

- **cinematographic films** (eg videos)
- **television and sound broadcasts** (television and radio)
- **published editions of works** (i.e. printed layout of a work).

The copyright in each of these 'non-works' exists independently of the copyright in any literary, dramatic, musical or artistic works recorded in them. This is important when considering obtaining permissions from copyright owners. A television broadcast of a film, for example, attracts its own copyright. So too does the cinematographic film that is broadcast. The film will also usually contain sound recordings and dramatic works (such as the screenplay or script) which are in themselves the subject of copyright. This means that the copying of a film that is broadcast on television might infringe the copyright of many different owners.

Infringement of copyright

Copyright is a bundle of exclusive rights to do, or authorise others to do, certain acts in relation to the protected material. The scope of the rights depends on the subject matter.

An infringement of copyright occurs where an act comprised in the copyright is done in relation to a 'substantial part' of a work or other subject matter. 'Substantial part' is not defined in the Act, but in deciding whether or not an act amounts to an infringement, courts have placed a greater emphasis on the quality of what is used than the quantity.

The exclusive rights in relation to the category of **works** are the rights to do or authorise the following acts:

- **reproduce** the work in material form (eg. photocopy, scan)
- **publish** the work
- **perform** the work in public (eg. recite, perform 'live' music, play recordings of music)
- to **communicate** the work to the public (to email and to make available online)
- make an **adaptation** of the work (eg. translations, screenplay versions)
- do any of these acts in relation to an adaptation of the work.

The exclusive rights in relation to **artistic** works are more limited, and consist of the rights to:

- **reproduce** the work in a material form
- **publish** the work
- to **communicate** the work to the public.

The exclusive rights in relation to the category of **subject matter other than works** are the rights to do or authorise the following acts:

The exclusive rights in relation to **sound recordings** and **cinematographic films** are:

- to **reproduce** a sound recording/film
- to **perform** a sound recording/film in public (i.e. cause it to be heard or seen in public)
- to **communicate** the sound recording/film to the public (i.e. to email or make available online)
- in relation to sound recordings - to enter into a commercial rental arrangement in respect of the recording.

The exclusive rights in relation to **television** and **sound broadcasts** are:

- in the case of a television broadcast in so far as it consists of visual images - to make a cinematographic film of the broadcast, or a copy of such a film
- in the case of a sound broadcast, or of a television broadcast so far as it consists of sounds – to make a sound recording of the broadcast, or a copy of such a sound recording
- in the case of a television or a sound broadcast - to re-broadcast it or communicate it to the public otherwise than by broadcasting it.

The exclusive right in relation to a published edition of a work is to make a facsimile copy of the edition.

For Universities, the most commonly exercised rights are the **reproduction** right and the **communication** right.

When television or radio broadcasts are copied onto audiovisual tape, there is a reproduction in material form of any underlying subject matter, such as the sound recording and cinematographic film, as well as of the broadcast. In addition to these types of analog copying it is now possible to make electronic or digital copies such as copies on CD ROM formats, copies stored on servers or the hard drive of a computer.

When any digital copy is then either transmitted electronically (eg, by sending the copy to students as an email attachment) or made available online (eg, by up-loading the copy onto a university server in a form which can be accessed by staff or students) there is a communication as well. There may also be a communication when a copy is shown or played to students by means of a reticulated delivery system (eg where the sounds and/or images are delivered from one site at the university to another site or sites by means of wires, cables or otherwise).

Avoiding copyright infringement

Copyright infringement can be avoided either by obtaining permissions or licences from copyright owners or by making use of several exceptions contained in the Copyright Act. The following sections of the guidelines cover the statutory licensing scheme for copying and communicating broadcasts in Universities, and a series of other relevant exceptions in the Copyright Act.

Exceptions allowing use of copyright material without infringement

Copying/communication which is authorised by the copyright owner

Some universities enter into licence agreements with the owners of copyright in broadcasts or in works or other subject matter included in the broadcasts. If you have a licence from all relevant copyright owners authorising copying and/or communication, then it is not necessary to use the Part VA statutory licensing scheme in relation to licensed copies and communications. Note, however, that it might be necessary to obtain licences from many different copyright owners in relation to one broadcast, and that generally this will not be practical.

Fair dealing

The fair dealing provisions of the Act are an exception to the exclusive rights of copyright owners. They allow copying and communication for certain purposes to be done for free without infringing copyright.

Fair dealing for the purposes of criticism or review

A fair dealing with an audiovisual item will not infringe copyright in either the item or in any work or other audiovisual item included in the audiovisual item if it is for the purpose of criticism or review, whether of that work or another work, provided there is sufficient acknowledgment of the work copied. Any acknowledgment should identify the author/creator (unless the author is anonymous or has agreed or directed that they not be named) and identify the work from which the copies are taken by its title or other description.

An example of how this provision might be relied on by a university lecturer is where an audiovisual item such as a film or sound recording is copied to be played at an academic conference for the purpose of commenting critically on the material. Without the protection of the fair dealing provision both the copying and the 'causing to be seen or heard in public' might – assuming a 'substantial amount' was used – amount to an infringement of copyright.

In order to obtain the protection of this section, the purpose of the dealing must be criticism or review. If the court considers that the real purpose of the dealing was to capitalise on publishing another creator's material, the protection will be lost.

This category of fair dealing does not apply to multiple copying for distribution to students. But it may apply to copying you do for yourself or for other staff. It may also apply to communications between academics for the purpose of academic criticism and discussion.

Fair dealing for the purpose of parody or satire

Changes to the Copyright Act in December 2006 have created a new Fair Dealing exception for parody and satire. Material can be reproduced if it is for the purposes of parody or satire and the dealing is fair. The factors to consider in determining whether the use is fair are:

- The purpose and character of the use
- The nature of the material being copied
- The possibility of obtaining the material within a reasonable time at an ordinary commercial price
- The effect of the use on the potential market for and value of the material being copied
- And where only part of the material is being used, how much of it is being copied.

Because this is a new exception there is no case law in Australia on its use. The parameters of what can be copied under this exception are unclear.

Please contact the [Copyright Adviser](#) if you think your copying might fall under this exception.

Fair dealing for the purpose of research or study

A fair dealing with an audiovisual item does not constitute an infringement of copyright if it is for the purpose of research or study.

If you are copying for yourself or for other staff, the first question is whether the copy is made for the purpose of research or study.

Consider first the use or uses to which the copy is likely to be put. If it is part of the research function, such as preparing an conference presentation, or part of an academic's general reading/viewing to maintain current awareness in his or her field, then it is very possibly made 'for

the purpose of research or study'. Making multiple copies will not usually be considered to be 'for the purpose of research or study'.

It may be that in practice very few instances of communication will fall within this purpose, although a communication between two academics for the purpose of joint research will most likely satisfy the test.

Once you have decided that a particular copying or communication is for this purpose, the next question you need to ask is whether the copying/communication would be considered 'fair' (see 'Fairness' below).

Fairness

For any copying or communication which is for research or study you must ask whether the copying is 'fair'. Fairness is the paramount consideration. The *Copyright Act* contains some important guidelines.

In determining whether an instance of copying or communication is a fair dealing a court is directed to consider the following factors:

- the purpose and character of the dealing
- the nature of the audiovisual item
- the possibility of obtaining the audiovisual item within a reasonable time at an ordinary commercial price
- the effect of the dealing upon the potential market for, or value of, the audiovisual item
- in a case where part only of the audiovisual item is copied – the amount and substantiality of the part copied taken in relation to the whole.

Filming or recording broadcasts for private or domestic use

The copyright in radio and television broadcasts will not be infringed if such broadcasts are copied for private and domestic use. However, this provision cannot be relied on to copy broadcasts for the educational purposes of the university. It relates only to copying undertaken for the private and domestic use of the person who makes the copy.

Commercially purchased or hired videos and sound recordings

There is no infringement of copyright if a teacher or student plays a commercially purchased or hired video or sound recording to a class in the course of giving or receiving educational instruction, provided that the audience is limited to students and teachers who are taking part in the instruction or to people who are otherwise connected with the university. It might be cheaper to purchase or hire videos and show these to students than to use audiovisual material under the Part VA licence.

Note that when videos are purchased or hired for educational use, if at the time of sale/hire, the hirer or seller makes it known that there are limitations on screening the video for other than private and domestic use, to use the video for educational screenings may give rise to a breach of contract.

Purchasing tapes from licensed Resource Centres

Universities may purchase tapes of broadcasts from Resource Centres which have a licence with Screenrights. The university is not required to report these tapes under either record keeping or sampling, as the Resource Centres themselves pay the fee to Screenrights. Resource Centres which have a licence with Screenrights are the South Australian Tape Services Unit, and QUT Tape Copying Service at Audiovisual Services, QUT Kelvin Grove Campus.

Statutory licensing scheme – Part VA of the Copyright Act

What copying and communication is covered by Part VA?

Part VA of the Act contains a statutory licensing scheme for the copying and communication of broadcasts (television, radio, cable and satellite) and podcasts of material that was originally broadcast in Australia. Copying and/or communication done in reliance on the provisions of Part VA will not infringe the copyright in a broadcast, or in any work, sound recording or cinematographic film included in a broadcast.

As a result of an agreement entered into by Monash University in July 2001 staff are no longer required to keep full records of audiovisual copying, unless Monash is being sampled. Sampling is likely to occur for a 6 to 12 week period once every 4 years or so. Every staff member will, however, be required to comply with other obligations all year round.

If off-air copying for educational use is done by an individual at home, or by a staff member using equipment located within a department for use in their own classes or on behalf of someone else the person must comply with the instructions relating to labelling of copies, access to copies and/or communicating of digital copies (see licence requirements below).

Copies of radio and television broadcasts made at home for private entertainment or personal research and study purposes must not be used in university classes without complying with the licence requirements. Old material copied for personal use can be labelled so that it is authorised for the educational purposes of the University.

Any copies of radio and television broadcasts made by staff of an academic department for retention as a department archive or for use in classes taught in the academic department must comply with the requirements of the Part VA Screenrights Licence.

Special arrangements are available for the use of copyright material in Distance Education courses and for classes in which it is necessary for individual student access to the material.

What are the requirements for compliance with Part VA?

To be covered by the scheme, a copy or communication must be made by or on behalf of the University, and it must be made solely for the educational purposes of the University or another educational institution.

The 'educational purposes of the university' include:

- use to teach students;
- making the copy available to students as part of a course of study at the University; and
- retention in the University library or elsewhere (eg by a staff member) as a teaching resource

The protection against infringement afforded by Part VA will be lost if the copy is, with the permission of the University, used for a purpose other than the educational purposes of the

institution; made, sold or otherwise supplied for a financial profit; or given to an educational institution which does not at that time have a current licence under Part VA.

Limiting access to electronic communications of broadcasts

The Digital Agenda amendments require the University to take ‘all reasonable steps’ to ensure that access to broadcasts made available online in reliance on Part VA is restricted to those people entitled to receive access, eg staff and students of the university or of another university with a remuneration notice in place. Copyright works made available online in reliance on Part VA must not be available for access by the general public.

Labelling requirements – analog copies

Each **analog copy** of a broadcast made under the scheme, or any container in which such a copy is kept, must be labelled in accordance with the Copyright Regulations. The label must contain the following information:

<p>Made for Monash University under Part VA of the Copyright Act 1968</p> <p>Date program was transmitted _____</p> <p>Date this copy was made _____ (if different)</p>
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Labelling requirements – electronic copies

Each electronic copy or communication (online copy) under Part VA must contain the following notice:

<p style="text-align: center;">COMMONWEALTH OF AUSTRALIA Copyright Regulations 1969</p> <p style="text-align: center;">WARNING</p> <p>This material has been copied and communicated to you by or on behalf of Monash University pursuant to Part VA of the <i>Copyright Act 1968</i> (the Act).</p> <p>The material in this communication may be subject to copyright under the Act. Any further copying or communication of this material by you may be the subject of copyright or performers’ protection under the Act.</p> <p>Do not remove this notice.</p>

This notice must be prominently displayed either before or at the same time as the material being communicated appears on the screen.

Preview copying

The Act contains preview provisions which allow the university to make copies of broadcasts for the limited purpose of previewing those copies with a view to deciding whether or not to keep the copy and/or show it to students. Copies which are not required can then be wiped. Provided the preview provisions are complied with, a copy which is wiped within the 14 day preview period is treated as though the copy was never made.

In order to comply with the preview provisions:

- the copy of the broadcast must be made by or on behalf of the university
- the copy of the broadcast must be made and used solely for the purpose of enabling the university to decide whether or not the copy should be retained for the educational purposes of the university.

Once the copy has been made, the university has **14 days** during which to decide whether to retain the copy for the educational purposes of the university, or to wipe it. If the copy is shown or communicated to students, or otherwise used for the educational purposes of the university during this 14 day period, the benefit of the preview provisions will be lost and the copy will be treated as a licensed copy.

If only a segment of the copied broadcast is to be retained or communicated, take a copy of the segment and then wipe the original preview copy within the 14-day time period. By using the preview provisions in this way, the university can avoid having to pay for copying of material that is never used.

For copyright enquiries or enquiries relating to Part VA copying contact:

Megan Deacon
University Copyright Adviser,
Telephone 03 9905 5732
University.Copyright@lib.monash.edu.au

For enquiries relating to intellectual property contact.

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