



# Copyright



## Copyright licences

A guide for WA TAFE colleges



# Copyright



## Copyright licences

There are currently two educational statutory licence agreements that enable teaching staff at WA TAFE colleges to make multiple copies of works for the purpose of educating students.

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

- the text and artistic licence, administered through the Copyright Agency – which covers both hard copy and electronic source material; and
- the broadcast licence, administered by Screenrights.

Note that these licence agreements are for educational use only, ie such copies cannot be sold for commercial purposes or for profit, used in a private/domestic scenario or to market the TAFE college.

### Text and artistic works licence

#### Hard-copy sources

The text and artistic licence covers the copying of hard copy literary, dramatic, notated musical and artistic works. It allows teaching staff to copy:

- up to one chapter or 10 per cent of a book, whichever is the greater;
- one article from a magazine, newspaper or journal; two or more articles if the topics are related;
- fifteen pages of an anthology of short stories or plays; and
- all of a visual art work if accompanied by text. However, if a picture, map etc is being used on its own without the surrounding text, teaching staff need to check first whether it is commercially available within 30 days and, if so, purchase it.

The author or artist should be acknowledged along with particulars (eg title, publisher and page number) that will enable the source of the information to be established.

Teaching staff may copy a whole work in the following circumstances.

- The work has not been separately published or has never been published and is therefore not available to the public.
- It is not possible to purchase a hard copy of the work at an ordinary commercial price and within a reasonable time (usually 30 days, but six months for textbooks).
- The work is out of copyright and in the public domain, ie 70 years since first published or from the death of the author or artist.

### Electronic sources

The text and artistic licence covers the reproduction and communication of electronic/digital works in relation to literary, dramatic and notated musical works. This includes copying from websites, Microsoft® Word documents, PDFs and emails.

Reproduction covers copying, downloading from the internet and saving to hard drive, CD, DVD or printing from an electronic source. Communication is the reproduction of copyright material transmitted electronically, eg via email or by placing the material on a learning management system (LMS) or intranet.

Under the rules of this licence, TAFE colleges may reproduce and communicate:

- up to 10 per cent of the words of an electronic work; and
- one article in an issue of a periodical (eg e-journal, e-newspaper, e-zine or other electronic publication), two or more articles if the topics are related.

In addition, a whole work can be copied in the following circumstances.

- The work has not been separately published (including unpublished works such as a conference paper or research paper on disk) and is therefore not available to the public.
- The work is not available in electronic form to purchase at an ordinary commercial price within a reasonable time.
- The work is an artistic work.

Record the URL address, date and other details to identify the work.

The text and artistic licence does **not** cover:

- reproduction of computer programs; and
- reproduction or communication of sound recordings, audiovisual material or streaming online content.

Note: All information made available to students via intranet or internet under the text and artistic licence must be password protected and accessible only by teaching staff and students of the college, otherwise the licence agreement is invalidated. In all cases, it is recommended that you only copy what you need for educational purposes to minimise the copyright costs for the TAFE sector under the text and artistic licence.

See 'Education Licence B: Statutory Text and Artistic Licence' at [smartcopying.edu.au](http://smartcopying.edu.au) for more information.

## Labelling hard copy or electronic copies

It is recommended best practice that TAFE colleges label or attribute any third-party material copied into TAFE resources. This is necessary to limit the potential liability of the TAFE college should a student or staff member infringe copyright. Attributing will also assist the Copyright Agency to accurately distribute royalties to copyright owners and ensures 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).

For more information about attributing text and artistic works, see the PDF 'Attributions within course material'. Alternatively, go to 'Attribution of Text and Artistic Works: TAFE' or 'Text and Artistic Works' at [smartcopying.edu.au](http://smartcopying.edu.au).

## Notice to be attached to communications

Any electronic works communicated to students and teaching staff – such as material communicated by email, LMS or intranet – 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.

## Separately published works

'Separately published' means supplying copies to the public or making copies available to the public (eg by hard copy or website).

In order to establish if a work is separately published in an online context, ask the following questions and if the answer is 'yes', it is likely that it is separately published.

- Is the work something you would expect to receive as a complete work in hard-copy form, such as a newsletter, report, discussion paper or fact sheet?
- Has the work been made available in a separate format, such as a PDF or Word document?
- If the work is in HTML format, does the website treat it as a 'stand-alone' document? For example, does the website describe it as a report or separate document, or does it provide an index or description of the work?
- Is the work published or authored by someone other than the owner of the website?

However, if the work is a web page and part of a collection of web pages all concerned with the same subject matter, then it is not likely to be separately published.

## Making information available to students on an LMS

Images and text copied under the statutory text and artistic licence can only be uploaded onto a password-protected LMS. 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.

## Broadcast licence

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

WA TAFE colleges are allowed to copy broadcasts or podcasts and communicate them. 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).

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

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

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

## Commercially produced videos

Under section 28 of the Copyright Act, TAFE colleges are permitted to show a film or DVD as part of educational instruction, provided it is not-for-profit and people in the audience are either giving or receiving instruction or are connected with the organisation delivering the instruction.

There is no statutory licence agreement to copy music, films or DVDs, whether commercially purchased or downloaded from the internet. Therefore, such works cannot be copied unless permission is obtained from the copyright owner/s. There is limited availability for format shifting or copying under section 200AB of the Act, eg copying a film from a DVD onto a USB as an MP4, providing the following conditions are met.

- No other exception or statutory licence can be applied in this situation.
- You wish to use the content for a specific educational purpose.
- Your use is not 'unreasonable', ie it does not conflict with the normal use of the work or unreasonably prejudice the copyright owner's interests.

For more information on section 200AB, see the Department PDF 'Format shifting and section 200AB' or 'Flexible dealing' at [smartcopying.edu.au](http://smartcopying.edu.au).

It may also be possible to copy some of a commercially produced DVD under a disability exception. For disability exceptions, see 'Disability Access Exceptions' at [smartcopying.edu.au](http://smartcopying.edu.au).

## Pirate copies of film and TV

Piracy of film and TV programs costs the Australian and international film industry many millions of dollars in lost revenue. It is against Australian copyright law and carries severe penalties including imprisonment. Allowing illegally copied content to be screened puts the college, teaching staff and students at risk of prosecution and serious penalties.

To check if a film or TV program is a pirated copy, look for:

- 'ALL' region codes;
- poor sound and vision quality;
- subtitling and menu in a foreign language or poorly translated English;
- photocopied or poor quality covers;
- more than one film on one disc; and
- technical faults such as skipping and freezing.

If a film is still screening in the cinemas, then your copy is unlikely to be a legal copy.

## Copying by students

Students may copy content for their own private research and study under the fair dealing provision of the Copyright Act, which provides exceptions for the use of copyright material without permission.

Students may copy parts and, in some cases, 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.

There are special factors to be taken into account for literary, musical and dramatic works. In general, copying by students of the following will be considered to be fair dealing:

- the whole or part of an article in a periodical;
- more than one article in a periodical that relate to the same subject matter; and
- a 'reasonable' portion of a published edition of a literary, dramatic or musical work, being 10 per cent of the number of pages in the edition where the edition is more than 10 pages long or up to one chapter where the work is divided into chapters (or 10 per cent of the words in an electronic work).

The same fair dealing exceptions and factors apply for audiovisual material, eg sound recordings, films and broadcasts. For example, as part of a major media production by a student and for assessment purposes only (not for job applications, competitions, broadcasts etc), students can use music video clips; film trailers; and parts from short films, documentaries or advertisements as part of a production's sound/film track. Students are able to import songs, if the original is a legitimate copy and not an infringing copy, into digital editing software. They can edit the beat of the music to synchronise with visuals, or they may use the music to support a voice-over or narrative.

## 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 non-remunerable disability copying exceptions – the organisational disability exception s 133F and the fair dealing disability exception s 113E. For the purposes of the Copyright Act, disability refers to students that have trouble 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.

## Organisational disability exception

The organisational disability exception s 113F allows WA TAFE colleges and schools 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 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 regards to fairness, including:

- the purpose of the use, eg 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.

The information on copying for disabled students has been adapted from 'Disability Access Exceptions' at [smartcopying.edu.au](http://smartcopying.edu.au) under a [CC BY 4.0](https://creativecommons.org/licenses/by/4.0/) licence. See [smartcopying.edu.au](http://smartcopying.edu.au) for more information on disability access exceptions.

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).

Unless otherwise indicated the text in this resource is licensed under a [Creative Commons Attribution 4.0 Licence](https://creativecommons.org/licenses/by/4.0/).