

Macquarie University

Audio-Visual Copying and Communication Guidelines

**(Produced on behalf of the Australian Vice-Chancellors Committee
and revised as at 11 November 2005)**

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Audio-Visual Copying and Communication Guidelines

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

These **GUIDELINES** are intended for all universities. They are not comprehensive. The full text of the Copyright Act 1968 and the relevant Copyright Regulations should be consulted 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.

1. 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 off-air or off cable or satellite 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 (which include computer programs);
- dramatic works;
- musical works; and
- artistic works.

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;
- cinematographic films;
- television and sound broadcasts; and
- published editions of works.

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 scenario 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.

For universities, the most relevant of the exclusive rights to avoid infringing are the rights of **reproduction** and **communication**.

When television or radio broadcasts are copied onto audio-visual 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 copy 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 on-line (eg, by uploading 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.

2. 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. Only copying/communication done in reliance on the statutory licence needs to be recorded and declared in accordance with the marking and record-keeping provisions of Part VA. 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 audio-visual item does not infringe copyright in either the item or in any work or other audio-visual item included in the audio-visual item if it is for the purpose of criticism or review, **provided** there is sufficient acknowledgment of the item. Any acknowledgment should identify the author (unless the author is anonymous or has agreed or directed that they not be named) and identify the audio-visual item which is the subject of the criticism or review by its title or other description.

An example of how this provision might be relied on by a university lecturer is where an audio-visual 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. If instead of being shown at a conference the copy was **communicated** by up-loading it onto the academic's web-page – still for the purpose of commenting critically on the material – this might also amount to a fair dealing.

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

Fair dealing for the purpose of research or study

A fair dealing with an audio-visual item does not constitute an infringement of copyright if it is for the purpose of research or study. While the criticism and review provisions of the Copyright Act contain no guidance as to what factors should be considered in determining if a dealing is 'fair', the research and study provisions do contain such guidance.

In determining whether a dealing constitutes a fair dealing for the purpose of research or study a court is directed to consider:

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

Filming or recording broadcasts for private or domestic use

The copyright in radio and television broadcasts is not infringed if such broadcasts are copied for private and domestic use. There may be other copyright subject matter that is infringed. **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 copy off-air and pay Screenrights. This may be so, for instance, when the material required is a feature film. Where at or before the time of supply of the video, the hirer or seller makes it known that there are limitations on screening the video for other than private and domestic use, to do so might 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.

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 come within the preview provisions:

- the copy of the broadcast must be made by or on behalf of the university; and
- 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 (see Part 3 for a discussion of licensed copying).

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.**

3. Statutory licensing scheme – Part VA of the Copyright Act

1. 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). 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.

2. What are the requirements for compliance with Part VA?

Remuneration notice

Universities must opt into the statutory scheme by giving a remuneration notice to Screenrights, the organisation that collects money for copyright owners.

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 remuneration notice in force.

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 on-line 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 on-line in reliance on Part VA must NOT be available for access by the general public.

Marking, notice and record-keeping requirements

The University must also comply with the various marking and notice requirements contained in the Act and the Copyright Regulations.

- **Marking**

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 **either** contain the following information:

Made for Macquarie University under Part VA of the Copyright Act 1968
Date program was transmitted _____
Date this copy was made _____

or, alternatively, the copy may be marked with an identifying number or other reference code which will enable Screenrights to identify the University and locate a copy of the relevant copying record (see below).

There is no requirement to mark or label **copies which are made in electronic form** (eg a copy made on a CD-ROM or computer hard-drive). However, if such a copy is communicated, the steps set out immediately below must be followed.

Each electronic or digital copy which is **communicated** under Part VA must contain an electronic notice incorporating the following information:

<p style="text-align:center">COMMONWEALTH OF AUSTRALIA</p> <p style="text-align:center"><i>Copyright Regulations 1969</i></p> <p style="text-align:center">WARNING</p> <p style="text-align:center">This material has been copied and communicated to you by or on behalf of Macquarie University pursuant to Part VA of the <i>Copyright Act 1968 (the Act)</i>.</p> <p style="text-align:center">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 style="text-align:center">Do not remove this notice.</p>

This notice **MUST** appear either before or at the same time as the material being communicated appears on the screen.

3. Sampling

As a result of an Agreement entered into by your university in July 2001, staff will no longer be required to keep full records of audio-visual copying **unless** your university is being sampled. This is likely to be for a 6 or 12 week period once every 4 or so years. (At present, there is no sampling of communications. The sampling system will be amended some time in the future to include sampling of communications as well as copies). You will be notified when your university is required to take part in a sample of audio-visual copying.

Failure to comply with the sampling system during this period could lead to your university being required to keep records for an extended period. It could also lead to the university being exposed to copyright infringement action.

Every staff member is required to comply, all year round, with the other obligations discussed in these Guidelines.

For further information about copyright see www.copyright.mq.edu.au