

# Copyright Compliance Guidelines

## Section 1 - Audience

(1) These guidelines apply to staff, students, conjoints, honorary appointments, affiliates, and volunteers of the University of Newcastle (University).

## Section 2 - Executive Summary

(2) Staff and students may be both creators and users of copyright. Compliance with the [Copyright Act 1968](#) and [Copyright Regulations 2017](#) is a requirement of all staff and students of the University, and failure to comply could lead to copyright infringement action as well as University action.

(3) Under a statutory licence set out in the [Copyright Act 1968](#), the University is licensed to use copyright material for education purposes. The University pays fees under this licence and also enters into other agreements to allow staff and students to copy and communicate certain works and broadcast material. Fees paid are used for remunerating the creators of the works copied.

(4) The University is party to remuneration agreements with the collection societies Copyright Agency Limited (CA) and the Audio-Visual Copyright Society Limited, trading as Screenrights, for the use of copyright material. In addition, the University has entered into a collective remuneration agreement (Music License) with the music collecting societies APRA AMCOS, Phonographic Performance Company of Australia Ltd (PPCA) and the Australian Recording Industry Association (ARIA).

(5) The University also enters into direct license agreements with publishers and copyright owners when purchasing or subscribing to scholarly content.

(6) Use of copyright material for education purposes must fall within the limits prescribed by the [Copyright Act 1968](#) under the 'fair dealing' exemption, or as outlined under any licence agreement.

## Section 3 - Purpose

(7) The purpose of this document is to provide a set of guidelines to ensure copyright compliance at the University. The guidelines provided are not comprehensive and are intended to be read in conjunction with the [Copyright Act 1968](#) and the [Copyright Regulations 2017](#). The full text of [Copyright Act 1968](#) and the [Copyright Regulations 2017](#) should be consulted if particular questions concerning copyright arise.

(8) This document forms part of the University's Copyright Compliance Policy and should be read in conjunction with this policy.

## Section 4 - Scope

(9) The [Copyright Act 1968](#) protects the rights of authors and creators of original material, and regulates the use to which those other than the copyright owners can put to this material.

(10) For a work to receive copyright protection it must be 'original', 'reduced to material form' and created by a 'qualified person' (i.e. an Australian citizen or person resident in Australia). Ownership of works within the University is further outlined in the [Intellectual Property Policy](#).

(11) Types of works protected by the [Copyright Act 1968](#) includes:

- a. literary works, including computer programs;
- b. dramatic works;
- c. musical works; and
- d. artistic works.

(12) [The Act](#) generally prohibits the use of any copyright material without the permission of the copyright owner except in certain circumstances including:

- a. insubstantial use, such as quoting a line from a novel or long poem;
- b. fair dealing, including for the purpose of research or study, or for criticism or review (within specified limits); and
- c. material in the public domain.

## Section 5 - Definitions Specific to this Guideline

(13) In the context of this document:

- a. "statutory licence" means a licence under the [Copyright Act](#) granting broad rights to educational institutions to use copyright material in ways that usually require permission, provided that fair compensation is paid to the creators of the content; and
- b. "third party copyright" means work created by another person or organisation and used in a publication or communication. Use of this work requires permission unless the work is covered by a copyright exception or is under licence to the University, is out of copyright, or comes with Creative Commons or similar 'free' licence.

## Section 6 - Guidelines

### Rights of Copyright Owners

(14) Copyright is a bundle of exclusive rights to undertake, or authorise certain acts in relation to protected material. The exclusive rights of owners of copyright in literary, dramatic, musical, and artistic works are the rights to do or authorise certain acts including but not limited to, where relevant:

- a. reproducing the work in material form;
- b. publishing the work;
- c. performing the work in public;
- d. communicating the work to the public;
- e. making an adaptation of the work; and
- f. doing any of these acts in relation to an adaptation of the work.

(15) The right to reproduction is exercised when works are copied.

(16) The right to communicate a work to the public will be exercised when a copyright work is made available to the public on-line (e.g. uploaded onto a University server in a form which can be accessed by students), or electronically

transmitted (e.g. forwarded as an electronic file or email attachment).

(17) The right to adapt a work will be exercised when a work is changed.

(18) Works on the Internet is subject to copyright in the same way as other works.

## **Copying and Communication in the University Context**

(19) The following sections of these guidelines will help ascertain whether proposed copying or communication falls within one of the exceptions to copyright law.

(20) As a first step, identify the following:

- a. what is to be copied or communicated? (for e.g. who wrote and published it?);
- b. how much will be copied or communicated, and how many copies will be made?; and
- c. what will happen to these copies? (to whom they will be distributed or communicated, and for what likely purpose?).

(21) There is no copyright infringement if:

- a. the copyright is owned by the University;
- b. the material has been supplied to the University with an express licence to copy and/or communicate;
- c. permission has been obtained from the relevant copyright owner;
- d. the proposed copying and/or communication falls within any of several exceptions in the [Copyright Act 1968](#) that allow limited amounts of copying and communication without payment; or
- e. the copying and/or communication is covered by a statutory licence for copying and communicating print, graphic or audio-visual material in Universities.

## **Fair Dealing**

(22) The fair dealing provisions of the [Copyright Act 1968](#) are an exception to the exclusive rights of copyright owners. They allow some copying and/or communication of material containing copyright for certain purposes to be done for free and without infringing copyright.

(23) In this context, 'dealing' means using the material in any of the ways that is usually reserved for the copyright owner. In determining whether or not a dealing is fair depends on the facts of the case. In one case, the Federal Court stated that the fairness of a dealing 'is to be judged by criterion of a fair minded and honest person'. Relevant factors include:

- a. whether the person is using the material for commercial purposes;
- b. whether the copyright owner is out of pocket from the use;
- c. whether or not the person is using the material for his/her own use (generally it will not be considered fair dealing if the material is for use by others).

## **Fair Dealing for Research or Study**

(24) A fair dealing with a literary, dramatic, musical or artistic work, or with an adaptation of a literary, dramatic or musical work, does not infringe copyright if it is for the purpose of research or study.

(25) The [Copyright Act 1968](#) states that where a person is only using small amounts (as specifically set out in the Act) of the material described above for the purpose of research or study, their dealing of the material is assumed to be 'fair'. This means there does not need to be any evidence that it was fair.

(26) If a person's use of the material exceeds the limits specified in the [Copyright Act 1968](#), then the following factors will be taken into account to determine whether or not the dealing is fair. They are as follows:

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

(27) To decide if a use is a 'fair dealing for research or study', consider 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 article or book chapter, or part of an academic's general reading to maintain current awareness in their field, then it may be "for the purpose of research or study".

(28) Some teaching functions, such as preparing new courses, or copying articles or other material for students to study, could also fall within the fair dealing test. However, multiple copying for distribution or other use in teaching will not usually be considered to be 'for the purpose of research or study'.

### **Online Communication**

(29) Under the requirements of the [Copyright Act 1968](#), the University administers online communications of copyright material via the Course Readings system managed by the Library. All copyright material (other than images) copied in reliance on the statutory licence and communicated online under Part IVA, Division 4, 113P of the [Copyright Act 1968](#) (S113P), must be placed in the Course Readings system.

(30) Staff are not permitted to make copyright material available to students online via any other system including a Learning Management System. However, links may be made from other internal systems, including a Learning Management System, to material in Course Readings. Material held in Course Readings is only available to enrolled students and staff of the University. Students are required to enter a username and password to obtain access to the material. Further information on Course Readings is available at [Library - Course Readings](#).

(31) Staff may include images used in compliance with S113P of the [Copyright Act 1968](#) in Powerpoint slides or in a Learning Management System for educational purposes as long as access is restricted to enrolled students and staff of the University and the required notices are displayed (See Clause 41 and 42 of these guidelines).

### **Fair Dealing for Criticism and Review**

(32) Copying and communicating a work does not infringe copyright if it is for the purpose of criticism or review, provided there is sufficient acknowledgement of the work copied. For example, this provision might be relied on (depending on the circumstances of the situation) by a University lecturer where a work is copied to include in a conference paper for the purpose of commenting critically on the material.

(33) To obtain the protection of this section, the purpose of the dealing must be criticism or review. If the real purpose of the dealing was to capitalise on publishing another creator's material, protection will likely be lost.

(34) This category of fair dealing will rarely apply to multiple copying for distribution to students, but may apply to someone copying for themselves or for other staff. It may also apply to communications between academics for the purpose of academic criticism and discussion.

### **Copying for Examinations**

(35) Literary, dramatic, musical and artistic works may be used as part of a question or answer in an examination. If this exception is relied upon, the work may only be made available to students for the duration of the exam or

assessment activity.

## Materials in the Public Domain

(36) Public domain material means that no-one is claiming copyright, and the material is free for use – usually because the duration of the copyright has expired. Unless stated to be in the public domain, it should be assumed that materials are subject to the limitations imposed by the [Copyright Act 1968](#).

## Copying and Communication Using Division 4 of Part IVA of the Act

(37) Division 4 of Part IVA of the [Copyright Act 1968](#) relates to the statutory licence scheme which covers the copy and communication of works by educational institutions (including universities).

(38) This section of the [Copyright Act 1968](#) covers print and graphic copying and communication, and the copying and communication of broadcasts. Under this section of the Act:

- a. copying or communicating must be for educational purposes;
- b. the amount of a work copied or communicated must not unreasonably prejudice the legitimate interests of the owner; and
- c. there is no limit to the amount of a broadcast or post-broadcast podcast which can be copied and communicated for educational purposes.

(39) Further to the statutory licence, copying and communication of works and broadcasts must comply with any relevant agreements between the relevant works collecting society and the University.

(40) Teaching staff and research staff should be familiar with the definition of ‘educational purposes’ and a ‘reasonable portion’ as outlined in the [Copyright Act 1968](#). Further guidance on the restrictions and requirements around copying and communicating copyright works is available on the copyright website at [Library - Copyright](#).

## Marking and Labeling Requirements when Copying and Communicating Works

(41) It is a requirement to include the following warning notice when copying and communicating third party copyright works to students. Circumstances when the notice should be used include:

- a. in course packs and when providing handouts in class;
- b. in Course Readings, in Powerpoint slides, and when copying and communicating video and audio material; and
- c. when making audio-visual material available to students.

**WARNING:** This material has been reproduced and communicated to you by or on behalf of the University of Newcastle in accordance with section 113P of the Copyright Act 1968 (the Act). The material in this communication may be subject to copyright under the 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.

(42) Audio-visual material should also include the label:

Made for the University of Newcastle’s educational purposes under S113P of the Copyright Act 1968. Date broadcast dd/mm/yy. Date this copy made dd/mm/yy.

## **Sampling Requirements**

(43) The University is required to undergo periodic sampling exercises to provide information on copying and communication undertaken under the statutory licence and music licence. All staff are required to cooperate with these exercises so that the University meets its contractual commitments.

## **Commercial Licenses and Other Agreements**

(44) The University has commercial licence agreements with publishers and vendors to provide access to a wide range of academic journals, books and other scholarly content. The University is also party to licence agreements negotiated for the tertiary education sector on favourable terms by the Council of Australian University Libraries (CAUL).

(45) Access to and use of this material is governed by the individual licences with the publisher or vendor. These terms may be more or less restrictive than the terms of the [Copyright Act 1968](#).

## **Music License**

(46) The University has entered a collective remuneration agreement (Music Licence) with the music collecting societies APRA AMCOS, PPCA and ARIA that permits staff and students to perform, copy or communicate copyright musical works and sound recordings for educational purposes and for University events, subject to certain conditions.

(47) Further information on performing, copying and communicating musical works and sound recordings is available at [Library - Copyright](#).

## Status and Details

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<b>Effective Date</b>	25th January 2021
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<b>Responsible Executive</b>	Belinda Tynan Senior Deputy Vice-Chancellor (Academic)
<b>Enquiries Contact</b>	University Library

## Glossary Terms and Definitions

**"University"** - The University of Newcastle, a body corporate established under sections 4 and 5 of the University of Newcastle Act 1989.

**"Student"** - A person formally enrolled in a course or active in a program offered by the University or affiliated entity.

**"Research"** - As defined in the Australian Code for the Responsible Conduct of Research, or any replacing Code or document.

**"Staff"** - Means a person who was at the relevant time employed by the University and includes professional and academic staff of the University, by contract or ongoing, as well as conjoint staff but does not include visitors to the University.

**"Learning Management System"** - The web-based system used to help facilitate online interactions between staff and students in their learning and teaching activities.