

Copyright Guidelines - Part VB (Electronic)

Section 1 - Introduction

- (1) Failure to follow these Guidelines could lead to copyright infringement action. (To apply from 4 March 2001 until further notice).
- (2) These Guidelines provide information about copyright. They are not comprehensive. The full text of the [Copyright Act 1968](#) (updated to incorporate the Digital Agenda amendments), and the relevant Copyright Regulations, should be consulted, and legal advice obtained, if particular questions concerning copyright arise.
- (3) As the Copyright Act has been substantially amended (the Digital Agenda amendments, which come into force on 4 March 2001) these GUIDELINES should be consulted rather than any document written before the Digital Agenda amendments.
- (4) The Guidelines are in three sections:-
- What does copyright cover?
 - Exceptions allowing use of copyright material without infringement.
 - Copying and communicating under the Part VB statutory licence.

Section 2 - What does copyright cover?

- (5) Material protected by copyright is divided into two broad categories of subject matter: works, and subject matter other than works. Print and graphic material which is copied in universities will generally fall into the first category.

Section 3 - Works

- (6) The category of works is further divided into:-
- literary works (which include computer programs);
 - dramatic works;
 - musical works; and
 - artistic works.
- (7) For a work to receive copyright protection it must be "original" and it must be "reduced to material form".
- (8) The originality requirement requires only that the author of the work has used some skill, and has not copied 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.
- (9) It follows from this that 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.

Section 4 - Infringement of copyright

(10) 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.

(11) 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.

(12) From 4 March 2001, the exclusive rights enjoyed by owners of copyright in literary, dramatic and musical works are the rights to do or authorise the following acts:

- a. reproduce the work in material form;
- b. publish the work;
- c. perform the work in public;
- d. to communicate the work to the public;
- e. make an adaptation of the work; and
- f. do any of these acts in relation to an adaptation of the work.

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

- a. reproduce the work in a material form;
- b. publish the work; and
- c. to communicate the work to the public.

(14) For Universities, the most relevant of the exclusive rights are the reproduction right and the communication right.

(15) When print and graphic material is copied, there is a reproduction of any work or works comprised in the material.

(16) The communication right is exercised when a copyright work is made available to the public on line (eg. uploaded onto a university server in a form which can be accessed by students) or electronically transmitted to the public (eg forwarded as an electronic file or email attachment).

Section 5 - When and how can Universities copy or communicate copyright material?

(17) 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. you obtain permission from the relevant copyright owner;
- d. the proposed copying and/or communication falls within any of several exceptions in the Copyright Act that allow limited amounts of copying and communication without payment; or
- e. the copying and/or communication is covered by the "statutory licence" for copying and communicating print and graphic material in universities. Universities make payments, through Copyright Agency Limited (CAL) for copying and communicating under the statutory licence.

(18) The following sections of these GUIDELINES will help you decide whether your proposed copying or communication falls within one of the exceptions to copyright law (Part 2) or within the statutory licence (Part 3). If it does not, there may be a copyright problem and you must not make the copies, or communicate the work, without first consulting the University Copyright Officer.

(19) To use these GUIDELINES you will need to know what you propose to copy or communicate (for example, who wrote and published it), how much of it you will copy or communicate and how many copies you will make; and what will happen to those copies (to whom will they be distributed or communicated and for what likely purpose).

(20) You should then ask yourself these questions:

- a. Has the person who owns the copyright given the University permission to copy and/or communicate the work? If so, you can proceed to copy/communicate without addressing the following questions. If not, then:
- b. Does your proposed copying and/or communication fall within any of the exceptions to the Copyright Act such as "fair dealing" (This is explained later in this document). If so, then you can proceed without regard to the Part VB statutory licence. For any copying/communication which is within neither of questions 1 or 2:
- c. Does your proposed copying/communication fall within the statutory licence? If it does, you will need to read and comply with the obligations set out in Part 3, including the marking and notice requirements. If not, do not copy or communicate without seeking further advice from the Copyright Officer.

Section 6 - Exceptions allowing for the copying or communication of copyright material without infringement

Copying/communication which is authorised by the copyright owner

(21) Some universities enter into licence agreements with the owners of copyright in works. If you have a licence from all relevant copyright owners authorising copying and/or communication, then it is not necessary to use the Part VB statutory licensing scheme. Permission to copy might also be granted by academics or others in relation to their work, if they own the copyright. Note, however, that the mere fact that a person is the author of work does not mean that he or she retains copyright. This may have been assigned to the publisher of the work.

(22) Examples of copying which has been authorised or licensed include the copying of Blackline Masters, copying from some electronic journals purchased under licence by the University Library, copying certain court decisions and copying for which sector-wide licences have been obtained. The AVCC will be advising universities from time to time when such sector-wide permissions have been negotiated. In each case the licence terms must be observed.

(23) Licences entered into prior to the enactment of the Digital Agenda Act may not expressly include the right to communicate works. If you are in any doubt as to whether the University is authorised to communicate a copyright work, you should consult your copyright officer.

Section 7 - Multiple copies of an insubstantial portion

(24) Multiple copies of an insubstantial portion (usually 1 or 2 pages) of a literary or dramatic work can be made for free in certain circumstances. The copying must be carried out on the premises of the University for the purposes of a course of education provided by it. In the case of a work which is in hard copy form, the exception does not apply to

the making of a copy of more than two of the pages of a work in an edition of the work unless:

- a. there are more than 200 pages in the edition; and
- b. the total number of pages copied does not exceed 1% of the total number of pages in the edition.
- c. In the case of a work which is in electronic form, this exception does not apply if more than 1% of the total number of words is copied.

(25) A further limitation is that a period of more than 14 days must elapse before a person relying on this provision can seek to copy any other part of the same work in reliance on it.

(26) The insubstantial portion provision does not apply to artistic or musical works.

Communication of an insubstantial portion

(27) An insubstantial portion of a work can also be communicated without the need for payment. The communication must be carried out on the premises of an educational institution for the purposes of a course of study provided by it. The exception does not apply to the communication of more than 1% of the total number of words in the work.

(28) Two further limitations apply:

- a. a period of 14 days must elapse before a person relying on this provision can communicate any other parts of the work in reliance on this provision; and
- b. the parts of the work previously made available on-line must be taken down before a person can make another part of the work available in reliance on this provision.

Section 8 - Copying for examinations

(29) Literary, dramatic, musical and artistic works are able to be copied without infringement as part of a question to be answered in an examination, or in an answer to such a question. This exception applies to copies only, not communications.

Section 9 - Fair dealing

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

Section 10 - Fair dealing for the purposes of criticism or review

(31) 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 in the work 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 (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.

(32) An example of how this provision might be relied on by a University lecturer is where a work is copied for inclusion in a conference paper for the purpose of commenting critically on the material. Without the protection of the fair dealing provision this copying might – assuming a "substantial amount" was used – amount to an infringement of copyright.

(33) 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.

(34) This category of fair dealing will very rarely 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.

Section 11 - Fair dealing for the purpose of research or study

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

(36) If you are copying for yourself, for other staff or for distribution to on-campus students, the first question is whether the copy is made for the purpose of research or study. (Copying and communicating for external students is in a special category, discussed later.)

(37) 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 article or book chapter, or part of an academic's general reading to maintain current awareness in his or her field, then it is very possibly made "for the purpose of research or study". Some teaching functions, such as preparation of new courses, or copying of an article or other material for an individual student or small group of students to study, could also fall within the test. But multiple copying for distribution or other use in teaching will not usually be considered to be "for the purpose of research or study", so be cautious before concluding that copying for teaching purposes does fall in this category.

(38) 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. Remember that once you have decided that a particular copying or communication is for this purpose, you still have to consider whether it is fair (explained below).

Section 12 - Copying for external students

(39) The exception to copyright infringement for fair dealing for research or study applies more strongly to enrolled external students. Any copying or communication of literary works (which includes print material other than artistic works or music and, possibly, plays) which is for the purposes of or associated with a course of research or study by an enrolled external student is permitted, provided it is fair (explained below). But you must be careful. If the material you copy for the external students includes artistic works, then you cannot assume that copying to be covered by the exception. The scope of the fair dealing provision as it relates to copying for external students is currently the subject of a legal challenge by CAL against the universities. If CAL is successful, universities may be required to do some or all of this copying under the statutory licence. This could have effect in relation to any copying (or communicating) done under the record-keeping notice.

Section 13 - Copying for off-shore students

(40) If copies are made in Australia for enrolled off-shore students, they are licensed copies (unless an exception applies) and should be reported during the period of a sample. If the copies are not made in Australia, Australian copyright law will not apply.

Section 14 - Fairness

(41) For any copying or communication which is for research or study (or in the special case of external students for the purposes of or in association with a course of study by external students), you must ask whether the copying is "fair". Fairness is the paramount consideration. The Copyright Act contains some important guidelines.

(42) First, if you copy less than 10% of the pages of a published work (or less than 10% of the words of a published work in electronic form) or one chapter, or one article in a periodical, and you are sure that you meet the test of "research or study" or use by external students, then that copying is taken to be fair, and is automatically protected by the Act. You do not record that copying. (Note that this deeming provision applies to copying only, NOT communications. The Act provides no guidance on how much of a work can be communicated in reliance on the fair dealing provisions. It may be that the fair dealing exception is of little practical use with respect to communications.)

(43) If you copy more than 10%, one chapter or one article, then in determining whether the copying or communication is a fair dealing a court is directed to consider:

- 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 part only of the work or adaptation is copied – the amount and substantiality of the part copied taken in relation to the whole work or adaptation.

Section 15 - Electronic copying and communication under the Part VB licence

What electronic copying and communication is covered by Part VB?

(44) Part VB of the Act contains a statutory licensing scheme for the copying and communication of print and graphic works by universities. The GUIDELINES in this section are concerned with electronic copying and communication only. They do not cover hard-copy copying.

(45) Electronic copying and communication done in reliance on Part VB will not infringe the copyright in any work copied, provided the strict rules of the Act are complied with. Copying or communication done in reliance on Part VB is licensed copying or communication. This covers any copying or communication of copyright work/s which:-

- a. is not done with the specific permission of the copyright owner; and
- b. does not fall under the fair dealing or other exceptions; and
- c. complies with the requirements set out in paragraphs (a) to (f) below.

What are the requirements for compliance with Part VB?

Remuneration notice - electronic use notice

(46) Universities must opt into the scheme by giving a remuneration notice to CAL, the organisation which collects money for copyright owners. This notice, which is called an "electronic use notice", covers electronic copying and communication only. It does not apply to hard-copy copying.

Nature and purpose of the copying

(47) 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 relevant purpose is that which existed at the time the copy or communication was made.

(48) The "educational purposes of the University" include:

- a. use to teach students;
- b. making the copy available to students, or communicating to students, as part of a course of study at the University;
- c. retention of a copy in the University Library or elsewhere (eg by a staff member) as a teaching resource; and
- d. the administration of students and courses.

Notice to users

(49) Each licensed electronic copy and licensed communication **MUST** contain the following, prominently displayed, notice:-

COMMONWEALTH OF AUSTRALIA

Copyright Regulations 1969

WARNING

This material has been reproduced and communicated to you by or on behalf of The University of Newcastle pursuant to Part VB 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.

(50) This notice must be prominently displayed on each electronic copy made in reliance on Part VB and whenever a copyright work is communicated (ie made available on-line or electronically transmitted) in reliance on Part VB. It **MUST** appear either before or at the same time as the material being communicated appears on the screen.

Reasonable steps to limit access

(51) It is a requirement of the Part VB licence that the University take "all reasonable steps" to ensure that material electronically communicated in reliance on the Part VB licence can be received or accessed **ONLY** by people entitled to receive or access it, 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 VB must **NOT** be available for access by the general public.

(52) Consult Trevor Gerdson on extension 8994 for further information regarding this obligation.

Monitoring the period during which material remains available on-line

(53) Material which is communicated in reliance on the Part VB licence by being made available on-line can remain on-line indefinitely. However, there is deemed to be a fresh reproduction and a fresh communication at the end of each 12 month period that the material remains available on-line.

(54) No electronic use system has yet been agreed or determined. This means that there is no requirement – as yet – to record electronic copies and communications. However, as soon as such a system is introduced there will be a

requirement for your university to record (either periodically or full time, depending on the nature of the system) these "deemed" copies and communications. Your university has developed a procedure for monitoring the period during which material remains available on-line in order to be in a position to comply with this obligation. It is important that you notify your university copyright officer of any material which you make available on-line, in reliance on the Part VB licence, in order to assist in the monitoring process.

Limits on the amount that can be copied or communicated

(55) The Act imposes limits on how much of a particular work can be copied electronically or communicated. These limits are essentially the same as those that have applied in the past, and continue to apply, to hard-copy copying. However, there are some IMPORTANT differences.

(56) If you are copying from hard-copy to electronic form (eg, scanning a chapter of a book or a journal article into digital form), the following limits apply:-

- a. in relation to articles contained in a periodical publication, the whole or part of an article can be copied. The licence does not extend to copying of, or of parts of, two or more articles contained in the same periodical publication unless the articles relate to the same subject matter;
- b. in relation to a literary or dramatic work contained in a published anthology, and comprising not more than 15 pages of the anthology, the whole or part of that work can be copied. An example would be an essay contained in an edited collection of essays; and
- c. in relation to all other copying of literary, dramatic, musical or artistic works, a "reasonable portion" of the work can be copied. The Act deems that where a literary, dramatic or musical work which is published as a published edition (for example, a book or play) is copied, then provided no more than 10 per cent of the pages in the edition, or one chapter (whichever is more), is copied, the amount will be taken to be a "reasonable portion." If you take more than that, it generally will not be a "reasonable portion", unless the person doing or requesting the copying is satisfied, after reasonable investigation, that copies (other than second-hand copies) of the work cannot be obtained within a reasonable time at an ordinary commercial price.
- d. If the work you are copying or communicating is already in electronic form (eg an electronic journal from a CD ROM – assuming your copying and/or communication is not already paid for and governed by a subscription agreement - or the Internet), the following limits apply:
- e. in relation to articles contained in a periodical publication, the whole or part of an article can be copied or communicated. The licence does not extend to copying or communication of, or of parts of, two or more articles contained in the same periodical publication unless the articles relate to the same subject matter;
- f. in relation to musical works, 10 per cent of the work (unless the work has been separately published and the person who makes the reproduction is satisfied, after reasonable investigation, that the work is not available in electronic form within a reasonable time at an ordinary commercial price); and
- g. in relation to all other copying of literary or dramatic works, a "reasonable portion" of the work can be copied. The Act deems that where an electronic copy of a literary or dramatic work which is published as a published edition (for example, a book or play) is copied, then provided no more than 10 per cent of the words in the edition, or, if the work is divided into chapters, one chapter (whichever is more), is copied, the amount will be taken to be a "reasonable portion." If you take more than that, it generally will not be a "reasonable portion", unless the person doing or requesting the copying is satisfied, after reasonable investigation, that copies (other than second-hand copies) of the work cannot be obtained within a reasonable time at an ordinary commercial price.

(57) A very important limitation on the communication of works is that if a university wishes to make available on-line a reasonable portion of a work (other than an article contained in a periodical publication) it can only do so if no other part of the same work continues to be made available at the same time. In other words, if the Arts faculty has copied a chapter of Patrick White's *Voss*, and made this available on-line, no other faculty in the university can make another

part of the same work available on-line in reliance on the Part VB licence until this first part is taken down. Failure to comply with this limit will result in loss of the licence for the second (and subsequent) portions of a work made available on-line.

(58) This new strict copying limit does NOT apply to journal articles.

Section 16 - Note

(59) The protection against infringement afforded by Part VB will be lost if the copy is, with the consent 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.

Status and Details

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Responsible Executive	Matthew Davis University Librarian
Enquiries Contact	Anthony O'Brien Copyright Advisor (02) 4921 6456

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.

"Course" - When referring to a course offered by the University, a course is a set of learning activities or learning opportunities with defined, assessed and recorded learning outcomes. A course will be identified by an alphanumeric course code and course title. Course types include core courses, compulsory courses, directed courses, capstone courses and electives. For all other uses of this term, the generic definition applies.

"Law" - All applicable statutes, regulations, by-laws, ordinances or subordinate legislation in force from time to time anywhere in Australia, whether made by the Commonwealth, a State, a Territory or a local government and, where the context permits, includes the common law and equity.

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

"Lecturer" - All teaching academics including lecturers (of all levels), sessional academics and conjoint academics.

"Program" - When referring to learning, a program is a sequence of approved learning, usually leading to an Award. For all other uses of this term, the generic definition applies.

"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.