



A GENERAL GUIDE TO COPYRIGHT & MORAL RIGHTS PROTECTION IN AUSTRALIA

Sources: *Copyright Act 1968 (Cth) (Act)* and its Regulations. Copyright Council:

www.copyright.org.au/ACC/Find_an_Answer/ACC/Public_Content/Find_an_Answer.aspx;

www.screenrights.org/screen-audiences/screenrights-licences/australian-educational-licences/

www.copyright.com.au/http://apraamcos.com.au/music-customers/licence-types/

<http://apraamcos.com.au/music-customers/licence-types/community-band-choir-or-performance-group/>

<http://www.musicrights.com.au/fact-sheets/sheetmusic/>

CURRENT as at April 2019.

DISCLAIMER:

The material in this guide is of a general nature and should not be regarded as legal advice or relied on for assistance in any particular circumstance. In any important matter, you should seek appropriate independent professional advice in relation to your own circumstances.

U3A Network Inc accepts no responsibility or liability for any damage, loss or expense incurred as a result of the reliance on information contained in this guide. **NOTE:** the collecting agencies involved in the licencing of use of copyright works all have a legal advice hotline.

IMPORTANT WARNING: the blanket copyright licences obtained by U3A Network NSW Inc are only of benefit to those NSW U3As as have paid to U3A Network NSW their share of the annual cost of each licence.

A. WHY DO YOU NEED TO KNOW ABOUT THIS?

1. **Copyright infringement is theft!** The *Copyright Act* provides for both civil and criminal remedies for infringement. Relevantly, the main civil remedy is damages including additional damages for flagrant infringement¹.

Committee Members: they have a legal duty to ensure that their association, its tutors and members comply with the law as it relates to all U3A activities. The association may be held liable for the infringing conduct of its agents such as tutors, and the individual committee members may be held personally liable for damages on the basis of “*sanctioning, approve and countenance*” the infringing conduct².

Individual U3A Members: they have a duty to abide by the law.

2. Major Misconceptions & Issues

Can we copy 10% without permission or payment? No, this is a common misconception. Students can copy some material for their own research or study, however, teachers wanting to copy and communicate material to students is generally not allowed unless your organisation is covered by one of the collecting agency licences, if available.

Contrary to popular belief, content on the Internet is not free. It is protected by copyright in the same way as any other content. **Note:** downloading content from the internet constitutes an act of copying and is an infringement if done without the licence of the copyright owner or pursuant to a collecting agency licence, if available.

3. Examples of Uses

Can tutors copy Print Sheet Music? (see <http://www.musicrights.com.au/factsheets/sheetmusic/>)

Print Sheet Music falls into the category of “published editions” which are protected by their own copyright for 25 years from the end of the year in which they are first published. The publisher usually owns the copyright.

Buying a book of sheet music does not give you the right to photocopy without the copyright owner’s permission. You can copy it for educational purposes (see meaning below) but only if your association has an AMCOSS Schools Photocopying Licence **and** only if your association owns the sheet music.

¹ Section. 115

² Sections 13 (2), 36 (1) , 101 (1).

Can a tutor make copies of a play and have it performed by members of their U3A class?

Performance of play: section 28 of the *Copyright Act* provides an exemption to performances in class, or otherwise in the presence of an audience provided the work is performed by a teacher in the course of giving educational instruction. In that case the performance is deemed not to be in public provided the audience is limited to persons who are taking part in the instruction or are otherwise directly connected with the place where the instruction is given. Accordingly, the performance of a play does not constitute an infringement if it meets all of the aforesaid criteria.

Note: the section 28 exemption applies only to performances. It does not apply to the copying of the whole or a substantial part of the text of a play. For that reference needs to be made to the statutory licence administered by Copyright Agency (see below). Unfortunately, that licence only allows for the copying of the whole or a substantial part of a play if (a) it is part of an anthology and provided it is no longer than 15 pages long, (b) if it is not separately published or available for purchase, or (c) it is downloadable from a website but only if it is not commercially available, that is for sale.

If a play can be downloadable from a website and is available for purchase, only a 'reasonable portion' thereof may be downloaded (the act of downloading constitutes the making of a copy).

Can U3A's Lend Copyright Material to Other U3A's or U3A Members

The Australian Copyright Council provides a guide at

www.copyright.org.au/ACC_Prod/ACC/Information_Sheets/Lending_items_protected_by_copyright.aspx?WebsiteKey=8a471e74-3f78-4994-9023-316f0ecef4ef

Generally, copyright is not infringed by lending copyright material. "Lending" means occurs when a person allows another person to use copyright material for a period of time without requiring any payment for the loan. If payment is required it becomes a "commercial rental arrangement" which if it involves sound recordings (recorded music, interviews or talking books) or computer software (for example, computer games), permission of the copyright owner must be obtained.

Note: first check the terms and conditions of any material you wish to lend to another U3A. they may prohibit lending.

TED Talks

Please read carefully: www.ted.com/about/our-organization/our-policies-terms/ted-talks-usage-policy

Non-commercial use: TED encourages the sharing of the TED Talks that are licensed for distribution under its Creative Commons license, which means it may be shared by following a few requirements. Certain TED Talks that are licensed to TED such as performances and or other talks that TED has shared but not created may not be distributed. Do not use the TED site content for any commercial purposes, for sale, sublicense or in an app of any kind for any advertising, or in exchange for payment of any kind. You cannot remix, create derivative work or modify the TED site content in any way.

Can you make an adaptation of a musical work? 2 of the rights of the owner of copyright in a musical work are the right to make an adaptation of the work, and that in respect of any such adaptation the copyright owner has the same rights as they have in respect of the original musical work. For musical works, an adaptation is a new arrangement or transcription. Prior to making an adaptation you will need to seek permission from the owner of the copyright in the musical work. You can find out who owns the copyright in the musical work by contacting APRA AMCOS on 1300 852 388 , or by emailing mechres@apra.com.au. See also <http://www.musicrights.com.au/factsheets/making-adaptions/>

Note: Bach's works are out of copyright but the particular arrangement of his work you are using may not be. Check the work for a copyright notice!

Note: the above applies regardless of whether you are making a profit or not from your work, copying or sampling music without the permission of the copyright owners breaks the law.

4. Meaning of “public” and “educational instruction”.

Meaning of “Public”

Many of the rights given to works and subject matter other than works are concerned with acts performed in public. They include the right to perform the work in public, to communicate the work to the public, to cause a recording to be heard in public, to communicate a recording to the public, to cause a film, in so far as it consists of visual images, to be seen in public, or, in so far as a film consists of sounds, to be heard in public, and to communicate a film to the public.

In layman's terms these rights include, inter alia, the reading of a poem or reading from a book in public, the watching of a film in public, the listening to a cd in public, the performance of a play in public, and the singing by a choir of a song in public.

Note: infringement only occurs if these types of acts are done “in public”.

“In public” usually covers the doing of an act covered by copyright in a non-domestic setting (allowing a group of friends to come to your home each week or even once a month for the purpose of watching a film may not fall within “a non-domestic setting”!). In determining whether a performance is a public one, critically the court considers the nature of the audience. For example, a court has held that the screening of an information video to eleven employees of a bank outside business hours was a “public performance” of the music on the video. Further, the attendance at a concert by members of a club open to all the women living in a particular village was held to be a “public” performance despite the fact it was held in private premises and was restricted to members only. The court held that the performance formed part of the public life of the club’s members who were not bound together by any domestic or quasi domestic ties.

Note: A performance which is given for free or which has a small audience may still be regarded as a “public” performance for the purposes of copyright.

Also Note: certain events performed in public venues are likely to be regarded as “private” performances. These events are, for example, weddings or twenty-first birthday celebrations even if they occur in a hotel, wedding hall or restaurant.

Warning: the coming together of a group of U3A members for a purpose that includes the use of copyright material in a manner identified above will likely constitute an infringement of copyright for which your association and the members of the management committee may well be liable in damages.

Some Examples

Music: If you are playing music “in public”, you will need permission from the owners of copyright in the music, lyrics and sound recordings. **See discussion** under heading “MUSIC LICENCES” below which identifies the licences U3A Network NSW Inc. has obtained that relate to the use of music in public. Also see details of the Screenrights Licence that relates to the use of radio broadcast material by educational institutions.

Films/DVDs

No, U3As do not have a licence allowing a U3A member class to watch movies purely for entertainment. While copyright lasts, the owner of copyright in a film has certain exclusive rights, including the screening of a film “in public”. “Permission is generally needed to screen a film in any non-domestic setting, including, for example, at a film night or a fundraiser. Permission may be needed even if a fee is not charged for viewing the film or video. The only licence which makes such use non-offending is the Screenrights Licence discussed below. Note: this licence only covers movies broadcasted by tv and radio.

5. “Educational Instruction “

Two of the copyright licences acquired by U3A Network NSW Inc. allow the use of copyright materials but only in specified circumstances. Both are known as educational licences and their protection only extends to a use of copyright materials as part of a course of educational instruction. Watching a movie or listening to music simply for pleasure does not fall into the category of doing an act protected by copyright in connection with a course of instruction. See discussion re Educational Licences below for further details.

B. OPERATION OF STATUTORY LICENCES FOR EDUCATION

In 2017, amendments were made to the Copyright Act which covered five key areas. For the purposes of U3As the relevant change is concerned with the Part VA and Part VB statutory licences **for educational purposes**. The existing arrangements will continue to operate until the new arrangements have been negotiated between the relevant collecting agencies and educational institutions. Accordingly, the blanket licences obtained by U3A Network NSW Inc. continue to operate.

6. The Educational Statutory Licence

The statutory licence in the Copyright Act for educational institutions allows for the reproduction and online communication of certain amounts of text, images and print music (for which Copyright Agency has been appointed to manage) as well as the reproduction and online communication of television and radio broadcasts (for which Screenrights has been appointed to manage).

Educational Purpose

The statutory licensing scheme for education in Part VB of the Copyright allows educational institutions to **copy and share text, images and print music** without a copyright clearance **but only** if:

- the educational institution is covered by an agreement to pay fair compensation (U3A Network NSW Inc has entered into a number of blanket agreements); and
- the **use is for educational purposes** (e.g. in connection with a course of instruction).

Note: the use of the copyright material must be part of the educational instruction being provided by a tutor or student to a group of people there for that purpose (in the case of U3A, they must be members of U3A).

The scheme applies to any content from any source (printed, digital or online), from anywhere in the world, and to any form of copying or sharing (including printing, scanning, emailing, recontextualising and making available from learning management system).

Note: In some cases, a tutor may only use a 'reasonable portion' of a work that is separately published and available for purchase. A chapter or 10% of a book is regarded as a 'reasonable portion'. The scheme also allows teachers to copy an article from a periodical publication (or more than one on the same subject matter) and a work of 15 pages or fewer from an anthology.

Some copying is allowed **but excluded** from fair compensation arrangements. This includes copying of two pages or 1% on the premises of the institution, and images with text.

7. Result of the 2017 Amendments In 2017.

Section 113N of the Copyright Act provides that an educational institution may copy or communicate certain copyright material **for educational purposes** if the body administering the educational institution agrees to pay equitable remuneration to a collecting society.

The Part VA (TV and radio broadcasts) and Part VB (text and images) statutory licences have been replaced with a single simplified statutory licence covering broadcasts, text and images. Under the old licences, the Copyright Act included restrictions and conditions on using copyright material for educational purposes. The new statutory licence does not specify any restrictions or conditions. Instead, any restrictions and conditions of the new licence will be negotiated between educational institutions and Screenrights and Copyright Agency Those negotiations are ongoing.

U3A Network NSW Inc. has existing agreements in place with Screenrights and Copyright Agency.

8. Current Position of U3A Network NSW Inc and NSW U3As.

To support local NSW U3As, U3A Network NSW Inc. has arranged blanket licences for participating NSW U3As with the three main copyright agencies: Copyright Agency Limited

(CAL), Australasian Performing Right Association Limited (APRA) and the Audio-Visual Copyright Agency Ltd (Screenrights).

NSW U3As that have acceded to the various copyright licences obtained by U3A Network NSW Inc are treated by those agencies as “educational institutions”. This is important as there is no general defence to copyright infringement in respect of copying for educational purposes.

The contribution your U3A pays will depend upon membership numbers. The licences are issued to U3A Network NSW Inc on behalf of its participating members, which are not separately listed on the licence. The Treasurer maintains records of which U3As participate in each licence.

C. WHAT DO THE LICENCES COVER?

9. CAL (Copyright Agency Limited): 2010 Licence No. 5633

The Education Copyright Licence allows all tutors to copy and communicate certain copyright works (text and images) for **educational purposes**, from any source, including the internet, from anywhere in the world, without having to seek permission prior to use.

The Licence enables NSW U3As to do the following for **educational purposes**:

- a) Copy and communicate up to 10% or one chapter (whichever is greater) of third-party text or images.
- b) Copy and communicate an entire text work if it is part of an anthology and provided it is no longer than 15 pages long.
- c) Copy and communicate one whole article from any newspaper, journal or periodical - or more than one if on the same subject.
- d) Copy and communicate an entire work, if not separately published or available for purchase.
- e) Documents downloadable from a website (not commercially available): Copy all of it.
- f) Documents downloadable from a website (available for purchase): A ‘reasonable portion’.
- g) Copy any digital image from any source.
- h) Hardcopy images (not commercially available): Any hardcopy image from any source.
- i) Hardcopy images (available for purchase) If surrounded by text only.

10. *Screenrights (Audio-Visual Copyright Agency Ltd): 2010 Licence dated 15th June 2010.*

Screenrights licences **educational institutions** in Australia and New Zealand, enabling them to copy broadcast material (TV and radio), and put these copies on internal networks or email them to staff and students.

The 2017 amendments to the Copyright Act clarified the statutory licence for broadcasts, making it clear that it covers both traditional broadcasts and online broadcasts. Under this statutory licence regime, educational institutions can both copy and communicate online the following:

- a) Any material broadcast on Australian TV;
- b) Any material broadcast on Australian radio; and
- c) Broadcast content made available online by the broadcaster (such as a podcast of a documentary screened on the ABC).

Note: The statutory licence does not cover material from online streaming platforms (eg. Netflix) unless the online streaming platform is that of a broadcaster (eg. ABC iview).

Activities covered by this licence would include the copying and making available of a television show on an institution's intranet system so that students can access it for research, and the recording into an MP3 file of some music broadcast on a radio show for study in a music class.

So what can NSW U3As copy? The Screenrights licence allows for the following copying:

- a) Any program – including movies, current affairs, documentaries, news.
- b) Any amount – copy five minutes or an entire drama, make one copy or 20, it's up to you.
- c) Anywhere – make copies at home or in your library.
- d) From any channel – copy from free to air TV, pay TV or radio.
- e) From free to air broadcasters' websites or the broadcasters' official YouTube channels – copy broadcast material made available online by the broadcaster including podcasts and vodcasts or catchup TV.
- f) From online simulcasts of broadcasts – including online radio.

- g) In any format – copy or download and store digital copies on a hard drive or other devices.
- h) From old copies – update your DVD (or VHS) copies by putting them in digital format.

U3As may make the following uses of their copies:

- a) Show them in U3A class.
- b) Keep them in the U3A library as an ongoing resource.
- c) Store them on a network for U3A tutors and U3A students.
- d) Email them to U3A tutors and U3A students.
- e) Show them on an electronic whiteboard.

Remember that these rights must only be exercised for educational purposes.

Screenrights licenses third parties to make the copies for you, and to stream them to you. Services are available from Clickview, TV4Education, InfoRMIT and Screenrights' own service, EnhanceTV.

Screenrights also provides a website that includes free educational resources for audio-visual material at www.enhancetv.com.au. The main features of the site include free downloadable teachers/tutors notes for documentaries and feature films, and an educational IV email guide to which teachers/tutors can subscribe (free of cost).

Note: the licenced educational institution is U3A Network NSW Inc, not your home U3A.

D. MUSIC LICENCES.

You do not need permission to play music in a private situation. However, if you are playing music "in public", you will need permission from the owners of copyright in the music, lyrics and sound recording.

11. What is a "public performance"?

Any performance of copyright material which is not essentially private or domestic is likely to be regarded as "in public" for the purposes of copyright. See discussion above under heading "Meaning of Public".

12. What is "communication to the public"?

A "communication to the public" means communicating copyright material electronically to the public. This includes online uses of copyright material – for example, uploading music to the internet, streaming music and emailing files (except to family and friends) – and

broadcasting copyright material. Courts have held that transmitting music over the telephone while people are waiting on hold is also a communication to the public.

13. *Four Licensing Agencies*

There are 4 organisations that licence the use of music because a recorded song is made up of different parts which need licences for each use. They are:

- a) PPCA licence allows for **the public performance of a sound recording**, eg. playing a sound recording in public.
- b) ARIA licences certain types of the **reproduction (copying)** of the sound recording: a licence is required if you reproduce/copy sound recordings for certain purposes.
- c) APRA licences the public performance of musical works (the lyrics, the composition).
- d) AMCOS collects the mechanical royalty for musical works (eg, copies onto a CD, DVD or online, lyrics and music reproduced as sheet music).

14. **APRA (Australasian Performing Right Association Limited) 2010 Licence No. 01753907**

The U3A Network NSW Inc has an APRA Performance licence of a type known as a **“Community Band, Choir or Performance Group Licence”**. It allows for the holding of free events or rehearsals where copyright music is performed.

Note: holding ticketed events such as fundraising concerts must be held pursuant to an APRA Casual Event Licence and, possibly, an PPCA Event and Festivals Licence.

When do you need an APRA licence?

If your U3A provides music to the public (includes to U3A classes), including in any of the following ways:

- a) live performances;
- b) playing music CDs (or music in other formats including by means of digital services);
- c) playing the radio or a television;
- d) playing music as part of a telephone “on hold” system;
- e) playing music as part of training sessions, or presentations;
- f) playing music via your website;

then you will need a licence from APRA covering the musical works and lyrics.

For more details, see www.apraamcos.com.au/music-customers/licence-types/

Live music venues: who should get the licence?

Where music is being performed live, both the performer/s of the music and whoever organises that performance are responsible for making sure permission has been obtained to perform copyright-protected music in public. The proprietor of the venue may also be liable if a licence is not obtained. In practice, it is generally the proprietor of the venue who gets the relevant permission. Usually the APRA licence covers all performances taking place in a particular venue.

Performances not covered by any APRA licence

Certain public performances of music are not generally covered by the APRA licence. These include “grand rights” (the performance of entire dramatic and musical works such as operas, musicals or large choral works) and also the use of musical works in dramatic presentations and ballets. Permission to perform musicals, operas, and other “grand rights” works which are still protected by copyright is usually sought from the relevant music publisher.

If you want to use music in a theatrical context (for example, as background music during a play) contact APRA for initial information. T +02 9101 2377

15. When do you need a PPCA licence?

If you play recorded music (such as CDs) in public, you need a licence from PPCA as well as from APRA.

As a result of special exemptions in the Copyright Act, a PPCA licence is not relevantly necessary if:

- you are playing sound recordings as part of the activities, or for the benefit, of a registered charity; or
- you are playing music from a radio or television, rather than from a cassette, digital file or CD (Note that this exemption does not apply to internet radio: playing music via all forms of internet radio, including internet simulcasts of traditional radio broadcasts, requires a PPCA licence).

Even if you do not need a licence from PPCA, you will still need a licence from APRA in the 2 situations listed above if the music and lyrics on the recordings are protected by copyright and no other exception applies.

Note: even though the music is out of copyright (eg. works by Bach) it is more than likely that the copyright in the sound recording is still in copyright. If this is the case you will need a PPCA licence to play the music in public.

THE LAW

A. WHAT IS COPYRIGHT

Copyright is a legal right, existing in many countries, that grants the creator of an original work exclusive rights to determine whether, and under what conditions, this original work may be used by others. This is usually only for a limited time.” Wikipedia.

There is no registration procedure for copyright in Australia. The protection extended by the Act is extended to works created by foreign nationals and residents pursuant to *the Copyright (International Protection) Regulations 1969 (Cth)*.

B. WHAT ARE MORAL RIGHTS

These are obligations to attribute creators and treat their work with respect. These creators' rights are known as “moral rights”. They mean you must:

- a) attribute (give credit to) the creator.
- b) not say a person is a creator of a work when they're not.
- c) not do something with a work (such as change or add to it) that would have a negative impact on the creator's reputation

These obligations do not apply if you have the creator's consent, or if you act reasonably (as set out in the legislation; industry practice can be relevant).

Creators have moral rights even if they do not own copyright in their work. They cannot sell or completely waive their rights, but they can give consent for certain things that may otherwise breach their moral rights.

C. COPYRIGHT ACT 1968 (CTH)

Both copyright and moral rights are dealt with by the *Copyright Act 1968 (Cth)* (**Act**) and its Regulations.

1. What does the Act Protect?

It protects:

- a) **Works** being literary works. **Note:** includes computer software, dramatic works, musical works, and artistic works; and

- b) **Subject Matter other than Works** such as sound recordings, cinematograph films, TV and sound broadcasts\published edition (including sheet music).

2. Duration of Copyright

- a) **Published Works** other than photographs: the life of the author plus 70 years. Applies to works created before and after May1, 1969 and in which copyright subsisted as at 1 January 2005: s. 211, *US Free Trade Agreement Implementation Act 2004 (Cth)*.
- b) **Subject matter other than Works:**
 Sound recordings & cinematograph works: 70 years after the end of the calendar year work in which first publication occurred.
 TV broadcasts & sound broadcasts: 70 years after the end of the calendar year in which it was first made.
 Published editions: 25 years after the end of the calendar year in which the first publication first occurred.

3. Rights of Copyright Owners.

Works: the exclusive right:

In the case of a literary, dramatic or musical work, to do all or any of the following acts:

- a) to reproduce the work in a material form;
- b) to publish the work;
- c) to perform the work in public;
- d) to communicate the work to the public;
- e) to make an adaptation of the work;
- f) to do, in relation to a work that is an adaptation of the first-mentioned work, any of the acts specified above.

In the case of an artistic work, to do all or any of the following acts:

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

Subject Matter Other Than Works:

Sound Recordings: the exclusive right:

- a) to make a copy of the sound recording;
- b) to cause the recording to be heard in public;

- c) To communicate the recording to the public;
- d) to enter into a commercial rental arrangement in respect of the recording.

Cinematograph films: the exclusive right:

- a) to make a copy of the film;
- b) to cause the film, in so far as it consists of visual images, to be seen in public, or,
- c) in so far as it consists of sounds, to be heard in public;
- d) to communicate the film to the public.

Television broadcasts and sound broadcasts: the exclusive right:

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

Published editions of works, such as sheet music: is the exclusive right to make a facsimile copy of the edition.

4. Copyright Infringement

Infringement occurs when you do any of the things comprised in the copyright without the copyright owner's permission and without any relevant defence.

In the case of Works, it is not necessary for an infringer to copy or use all of the copyright work in order to be infringing copyright. It is sufficient for the infringer to have used a substantial part of the copyright work without consent or a relevant defence. The question of what is a "substantial part" is not defined in the *Copyright Act 1968 (Cth)* but courts have generally been interpreted it meaning as an important, recognisable, essential part of the whole. **The test of what is substantial is qualitative, rather than quantitative.** In other words, there's no rule that copying 10% or less of a work is okay.

5. Defences to Copyright Infringement

- a) What has been used without the copyright owner's consent is an insubstantial, unrecognisable, unimportant part of the copyright work;
- b) the alleged use was a fair dealing for the purposes of criticism and review;

- c) There are also limited statutory licences where the Copyright Act allows certain uses under a statutory licence scheme.
-