

## 2.4 Sound Recordings

### Overview

#### What is a sound recording?

A sound recording is the recording of:

- a particular performance of a song (music and lyrics)
- the recitation of a literary and dramatic work
- sounds, noises

**Sound recordings** includes vinyl, audio cassettes, plastic discs, reel to reel tapes, CDs, digital audio tape and MP3 files and any other method for storing sounds.

It is important to note that there was no protection for sound recordings prior to 1 May 1969. Prior to 1 May 1969, the musical and literary works recorded in the sound recording were protected as a musical work or literary work respectively.

#### Copying and communicating sound recordings

The Copyright Act contains a number of free use exceptions and other matters which allow copyright material to be used without the permission of the copyright owner.

In general, copyright in a sound recording will not be infringed if done:

- with the express permission of the copyright owner.  
See 1.10: Dealing with Copying for further information
- under the fair dealing, flexible dealing and educational exceptions
- under a Voluntary Licence.  
See 1.13: Copyright Exceptions for further information

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#### a. Fair dealing

The copying of sound recordings for fair dealing purposes is free and does not require the permission of the copyright owner. The relevant fair dealing exceptions are:

- Research or study - eg students copying and playing extracts of sound recordings to the class as part of a music or social studies assignment.
- Criticism or review - eg students reviewing and criticising a CD in a school or student radio program or website.
- Parody or satire – eg students re-writing the lyrics to a popular song to perform in class to make a satirical observation linked to a unit of study.

See 1.13: Copyright exceptions: Fair Dealing for further information

#### b. Flexible dealing

Schools and TAFE institutes can now use sound recordings for non-commercial teaching purposes if the use is not covered by another exception or Statutory or Voluntary Licence. To use the flexible dealings exception teachers must assess whether the proposed use:

Is a special case

Your use will be a special case where it is narrow in both a qualitative or quantitative sense. This means that you are only using what you need for educational instruction.

2.

Is for educational instruction

Educational instruction means teaching (including remote teaching), preparation for teaching, preparing materials for students to use for homework or research tasks, or other uses that are in connection with teaching.

3.

Is **not** for commercial advantage or profit

Your use will be commercial where you, your students or your institute are making a profit or gaining a commercial advantage from the use of the material. Cost recovery is likely okay.

4.

Doesn't conflict with the normal exploitation of the copyright material

Your use will probably conflict with the normal exploitation of the material where it is possible to purchase a similar resource.

5.

Doesn't unreasonable prejudice the legitimate interests of the copyright owner or person licensed by the owner

Your use will prejudice the copyright owner if you:

a. use more than you need;

b. interfere with the quality of the material;

c. expose the content to piracy, such as uploading the content to the Internet. Uploading the content to a password protected intranet, blog, wiki or content management system is okay provided students are not able to make further copies; and

d. don't remove the content from the password protected DTE as soon as practicable after it is no longer required for education instruction.

One example of an activity covered by the flexible dealings exception is copying an MP3 file of a song that has been purchased from an on-line music store into a PowerPoint presentation to play in class. Another example might be making a digital file of a French language song that is not available for purchase in digital format for inclusion in a podcast for a French language class. See information sheet "Format Shifting" for further information

c. **Other educational exceptions**

i. **Public performance of a sound recording in class**

Copyright is not infringed by a teacher or student playing a sound recording while giving or receiving educational instruction in a class.

See 1.13: Educational Exceptions: Performance of Material in Class for further information

ii. **Communication of sound recording for classroom performance**

The Copyright Act allows Schools and TAFE institutes to communicate sound recordings for performance to a classroom/virtual classroom (eg streaming music from the Internet in class or playing a CD using an electronic reticulation system).

See 1.13: Educational Exceptions: Communication of Materials to a Class for further information

d. **Other statutory exceptions**

i. **Copying sound recordings for preservation or archiving**

Libraries are permitted to make a copy of a sound recording in their collection for the purpose of retaining it in their archives or for preservation/back up if a copy cannot be acquired within a reasonable time at an ordinary commercial price.

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e. **Voluntary Licences**

**AMCOS/APRA/ARIA Licence**

Schools have a Voluntary Licence to allow copying of musical works and sound recordings for non-commercial educational purposes.

All government schools and most non government schools are covered by this licence.

The licence allows schools to:

- o make audio and video recordings of live performances of music
- o dub/copy an existing sound recording of a musical work

for the following purposes:

- o performing live music at a school event
- o playing recorded music (eg a CD) at a school event, such as an assembly, school concert or sports day
- o for analysis by students as part of a lesson.

Copies of the recording may be distributed to the students or kept in the school archives as a record of the event. There is no limit on the number of copies that may be archived or distributed to students. However, the school is not permitted to charge students or parents more than the direct cost of making a reproduction of the audio or video recording.

See Education Licence E: AMCOS/APRA/ARIA Licence for further information

See also FAQs: Sound Recordings

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National Copyright Unit  
Level 7, 105 Phillip  
St, Parramatta  
Tel: 02 7814 3855  
Email:  
copying@det.nsw.edu.

