



People with a disability: copyright issues

April 2007

This information sheet explains the provisions in the Copyright Act which allow organisations helping people with a print disability or an intellectual disability to use copyright material without permission. For detailed information about copyright for people with a print disability, see the *Print Disability Guidelines*, which are available on our website: <http://www.copyright.org.au/disability>.

We update our information sheets from time to time. Check our website at <http://www.copyright.org.au/disability> to make sure this is the most recent version, and for other information such as our training program.

The purpose of this information sheet is to give general introductory information about copyright. If you need to know how the law applies in a particular situation, please get advice from a lawyer.

Key points

- The Copyright Act allows **organisations** assisting people with a print disability or an intellectual disability to use copyright material without permission in some circumstances.
- As a result of amendments to the Copyright Act in 2006, in some cases, **individuals** with a disability, or people acting on their behalf, are entitled to make copies in order to access copyright material, provided certain conditions are met.
- Following the 2006 amendments, there are some specific exceptions to copyright infringement for personal use, which are not specifically directed to people with disabilities but may help people with disabilities to get better access to material in some cases.
- There is no general exemption from copyright requirements for personal or non-profit use.

Copyright law generally

Copyright protects certain categories of material, including:

- books, articles, song lyrics and reports;
- computer software;
- music;
- films; and
- sound recordings.

Generally, you need permission from copyright owners to use their material in certain ways, such as:

- reproducing or copying the material (including by making digital copies of digital files, recording a reading of a book on CD or recording, scanning, saving to disk or printing out a digital file); and
- “communicating” the material “to the public” (including by putting material onto a website, emailing it, broadcasting it or faxing it, in a non-domestic context).

For more information, see our information sheet *An introduction to copyright in Australia*.

In some circumstances, people can use copyright material without the copyright owner's permission, under certain conditions. The major exceptions to infringement concern:

- “fair dealing” for research or study, criticism or review, reporting news or giving legal advice (see our information sheets *Fair dealing* and *Research or study*);
- certain specific exceptions for personal use (see below under the heading “*Personal use*” exceptions);
- educational institutions copying for their educational purposes (see our information sheet *Educational institutions*);
- institutions assisting people with print or intellectual disabilities;
- libraries copying for clients, other libraries, and certain other purposes (see our information sheet *Libraries*); and
- State, Territory and Commonwealth governments (see our information sheet *Governments (Commonwealth, State & Territory)*).

“Personal use” exceptions

As a result of the 2006 amendments to the Copyright Act, there are now limited provisions allowing people to make copies for private use. The provisions permit:

- “time-shifting” (recording from TV and radio for watching or listening at a more convenient time) – provided the recording is not sold, rented or lent to anyone outside the family or household of the person who made the recording, nor played or shown in public nor broadcast;
- “space-shifting” (copying a sound recording from a CD you own to play on a device you own, such as an iPod or car CD player) – provided the copy is not made from a pirate CD, a download from the internet of a radio broadcast or similar program, an unauthorised download or other infringing copy, and provided the copy is not sold, rented or lent to anyone outside the family or household of the person who owns the CD, nor played or shown in public nor broadcast; and
- “format-shifting” (copying a book, photograph or video you own into another format, such as a digital file) – provided that no more than one copy is made in that format, the copy is not sold, rented or lent to anyone outside the family or household of the person who owns the original, no copies are made for other people and the owner of the original does not give it away.

For more information on the amendments, see the Australian Copyright Council's information sheet Copyright Amendment Act 2006, available at <http://www.copyright.org.au/permission.htm>.

Use of copyright material for people with disabilities

The Copyright Act sets out different regimes under which educational institutions, and institutions assisting people with intellectual disabilities or print disabilities, can use copyright material without needing permission. Following the approach used in the Copyright Act, we set out the provisions relating to print disabilities separately from those relating to intellectual disabilities.

The Copyright Act provides for these institutions to pay collecting societies (which represent owners of copyright) for their use of copyright material under these provisions. However, we understand that the payment rate is currently zero.

For text, the collecting society is Copyright Agency Limited (CAL), and for audiovisual material the collecting society is Screenrights (the trading name for the Audio-Visual Copyright Society).

New “special case” provision: use of copyright material for people with disabilities

Until 1 January 2007 Australian copyright law provided no special exception for **individuals** with disabilities to make copies in order to access material. Such individuals could make copies where this was a “fair dealing” (for example, for research or study), but otherwise had to rely on an institution assisting people with a print or intellectual disability to make copies for them.

In 2006, the Government passed legislation that, among other things, provides an exception to infringement for individuals with disabilities and people assisting them. Some important features of the “special case” exception are listed in this section.

The “special case” exception applies to individuals with disabilities that cause “difficulty in reading, viewing or hearing” copyright material. It is therefore broad in scope: unlike the other provisions for people with disabilities, the scope of the “special case” exception is not limited to people with particular kinds of disability.

If an individual has a disability that causes them difficulty in accessing copyright material, that person, or someone acting on his or her behalf, may do what is necessary for the person to access a copy “in another form, or with a feature, that reduces the difficulty”. For example, someone might scan a book (reproduce it), convert it into an accessible format (a further reproduction) and email it to the person with a disability (communicate it). There are a number of conditions for the exception to apply:

- the use of the copyright material must not be partly for the purpose of obtaining a commercial advantage or profit (but it is acceptable to make a charge for cost recovery);
- the circumstances of the use must “amount to a special case”;
- the use must not conflict with a normal exploitation of the material; and
- the use must not unreasonably prejudice the legitimate interests of the copyright owner.

The “special case” exception does not apply if any other provision of the Copyright Act applies (or would apply if the conditions were met). For example, in most cases, educational institutions and other institutions assisting people with a print disability will continue to rely on the provisions described in this information sheet. There may be a few cases in which such institutions can rely on the “special case” exception, but these will be limited in scope.

Unfortunately, the way in which the Government chose to draft the “special case” exception leaves some uncertainty about how it will apply in practice. Information provided by the Government indicates that the type of situation that could be covered by the “special case” exception might include “a person with a print disability (or their family, friends or an organisation) converting a hard copy of a book into a read-aloud or more appropriate version”. However, the person would also need to establish that the use did not conflict with normal exploitation of the material (which would be the case if, for example, the book were commercially available in a format that person could access); and that the use did not unreasonably prejudice the legitimate interests of the copyright owner (which would be the case if, for example, the scanned files were made widely available online). Case law may clarify the application of the exception.

In the mean time, individuals with disabilities may find it easier in many cases to rely on the new “personal use” provisions where they are applicable.

Print disability provisions

Special exceptions to infringement apply to educational institutions and to any other organisation that the Commonwealth Attorney-General has declared to be “an institution assisting people with a print disability” for the purposes of the Copyright Act.

Such organisations are entitled to reproduce and communicate literary and dramatic works in the form of sound recordings, or published literary and dramatic works in other accessible formats, “solely for the purpose of ... assistance to persons with a print disability”, under certain conditions, provided they have given a “remuneration notice” to CAL (contact details are provided at the end of this information sheet). These institutions can also make intermediate copies or “master copies” from which they can make copies for individuals.

If you are not sure whether your organisation is entitled to rely on the special provisions for institutions assisting people with a print disability, get advice from your peak body or from a lawyer. The Copyright Council may be able to provide initial assistance.

In 2005, as part of a project funded by CAL, we developed detailed guidelines on these provisions. The guidelines are available on our website: <http://www.copyright.org.au/disability>.

The print disability radio licence

A radio station which holds a print disability radio licence may broadcast published literary or dramatic works (for example, newspaper articles, or readings from plays). A print disability radio licence is a licence which is granted under the *Broadcasting Services Act 1992* (Cth) or the *Radiocommunications Act 1992* (Cth):

for the purpose of authorising the making of sound broadcasts to persons who by reason of old age, disability or literacy problems are unable to handle books or newspapers or to read or comprehend written material.

We understand that, in practice, this requirement is met by the granting of community radio licences with these stipulations. The station must keep a record of certain information for four years from the date of the broadcast, including:

- the time and date of the broadcast;
- identification of the work; and
- details of what has been broadcast, including the numbers of the pages which are broadcast (or a description allowing the pages to be identified if the pages aren't numbered).

We understand that Radio for the Print Handicapped broadcasts from stations in most capital cities.

Intellectual disability provisions

Special exceptions to infringement apply to educational institutions, and to other organisations that the Commonwealth Attorney-General has declared to be “institution[s] assisting people with an intellectual disability” for the purposes of the Copyright Act. Such organisations are entitled to reproduce and communicate material “solely for the purpose of ... assistance to persons with an intellectual disability”, provided they have given a “remuneration notice” to CAL and to Screenrights (contact details are provided at the end of this information sheet). A remuneration notice is an undertaking to pay for the copies and communications made.

Such institutions may also make intermediate copies or “master copies” from which they can make copies for individuals.

An “institution assisting people with an intellectual disability” can also make and communicate copies for other organisations or people (such as carers), as long as the copies are used to assist people with an intellectual disability.

If you are not sure whether your organisation is entitled to rely on the special provisions for institutions assisting people with an intellectual disability, get advice from your peak body or from a lawyer. The Copyright Council may be able to provide initial assistance.

Who is a person with an intellectual disability?

The Copyright Act does not provide a definition of a person with an intellectual disability. If you are not sure whether someone would be regarded as having an intellectual disability, ask a doctor or other health professional with expertise in the area.

What may be copied and communicated?

An institution assisting people with an intellectual disability may copy and communicate published literary, dramatic, musical or artistic works, published sound recordings and films (if a suitable copy is not commercially available), and TV and radio broadcasts (whether or not a suitable copy is commercially available). These institutions may also make translations and picture versions of literary and dramatic works.

Copying and communicating television and radio broadcasts

Screenrights administers a licence under the Copyright Act which allows institutions assisting intellectually disabled people to copy and communicate television and radio programs to provide assistance to those people. The institution must have given Screenrights a remuneration notice. There is no limit on the amount of the program that can be copied or the number of copies that can be made (provided each copy is made to assist an intellectually disabled person). Copies may be made under this licence even if you can buy a copy of the program. For more information about the licence, contact Screenrights. Its website is www.screen.org.

Marking requirements

You may need to mark copies, and some institutions need to keep records of copies made. Check with your peak body, or with Screenrights and CAL if you are not sure whether or not your institution needs to keep records of what is copied.

Intermediate copies

“Intermediate copies” that need to be made in order to prepare or communicate a copy for an intellectually disabled person are also covered by the exception.

Check with your peak body, or Screenrights and CAL if you are not sure about how you should mark temporary copies, or if you are not sure what records need to be kept.

Accessing material protected by “technological protection measures” (TPMs)

Copyright owners increasingly rely on “technological protection measures” (TPMs) to control access to, and use of, their material. Such measures include encryption and copy-protection.

As of 1 January 2007, the provisions in the Copyright Act concerning TPMs have been made stronger. A copyright owner is now entitled to take action against someone who circumvents a TPM (as well as against someone who manufactures, sells or advertises a circumvention service or device). There are limited exceptions to infringement, including (under the Copyright Regulations) uses by educational institutions or organisations assisting people with a print or an intellectual disability.

For further information, see our discussion paper *Technology, contracts & paracopyright*.

Status of “PDF” and other formatting software

Generally, formatting (such as basic PDF) is not a TPM, as it does not prevent people from accessing the document nor from making digital or hardcopy copies of the document. (We understand that Adobe provides free software that undoes PDF formatting.) Undoing such formatting will not raise issues under the Copyright Act, although making a copy may require permission.

However, we understand that PDF software does allow creators of documents to add further levels of protection to PDF documents, such as encryption that restricts access, and copy-protection. These forms of protection may constitute TPMs.

In any case, reproducing or communicating the material without permission may infringe copyright, regardless of the formatting or of any technological protection used.

Common questions

I have a print disability. Can I use a scanner and OCR program to get access to a printed book?

“Format-shifting”

Following the 2006 amendments, if you own a non-infringing copy of the printed book, you are entitled to make a single copy of it in a different format for personal use, to use instead of the printed copy (“format-shifting”). However, the exception to infringement does not apply if the copy is sold, rented or reproduced, or if you give or sell the printed book to anyone else.

“Special case” exception

As noted above, in some cases an individual with a print disability may be able to rely on the new “special case” exception to scan a book he or she does not own, or to get someone else to scan it, in order to access it. The “special case” exception will only apply, however, if the use of the book in this way:

- does not conflict with a normal exploitation of the material; and
- does not unreasonably prejudice the legitimate interests of the copyright owner.

It is difficult to be certain what is required in practice in order to rely on this exception. We consider that you would probably not be able to rely on the exception unless you had checked that the book is not available in a form you can access, and the publisher had no intention of publishing the book in that format or licensing reproduction into that format.

The special case exception would permit you to make a copy in an accessible for another individual with a print disability (or pass on your copy) provided all conditions were met, but we consider it would not permit you, for

example, to upload your copy to a website for general access by people with print disabilities, as this could unreasonably prejudice the legitimate interests of the copyright owner.

Can I share files containing scanned books with my friends who are also blind?

When you “share” electronic files, you in fact reproduce the files. If you email the files to others, or make them available online, you may also be “communicating” them. Using copyright material in either of these ways generally requires the permission of the copyright owner, unless an exception to infringement (such as fair dealing for research or study) applies, or copyright has expired.

If you have relied on the new “format-shifting” exception to scan a book you own, you are not entitled to make any further copies either from the printed copy or from your scanned copy. If you do so, even your own scanned copy will become an infringing copy.

As noted in response to the previous question, the new special case exception may allow you to make copies of scanned books for other individuals with a print disability, but would not allow you to make the files widely available. Whether or not the exception applies will depend on the circumstances of each case.

Can a library copy material for people with a disability?

Libraries may rely upon the library copying provisions in the Copyright Act to copy on behalf of clients, whether or not they have a disability. Copies made under these provisions may be adapted to the needs of a client, for example by being made in large print. For more information about the library copying provisions, see our information sheet *Libraries* or our book *Libraries & Copyright*.

Libraries cannot generally rely on the specific provisions relating to people with a disability (unless they are libraries within an educational institution or disability organisation). However, they may request an institution assisting people with a print or intellectual disability to make a copy under the relevant provisions; the library may then pass that copy on to the person with the disability.

Libraries may make copies for people with disabilities under the “special case” exception (discussed above, under the heading *New provision: use of copyright material for people with disabilities*), provided all the conditions are met.

Further information

For further information on copyright, see our website: www.copyright.org.au/disability.

Information for organisations copying printed text and images under either the provisions for people with a print disability or the provisions for people with an intellectual disability, is available from CAL: www.copyright.com.au; tel: (02) 9394 7600; fax: (02) 9394 7601.

For information on copying audiovisual material under the provisions for people with an intellectual disability, contact Screenrights: www.screen.org; tel: (02) 9904 0133; fax: (02) 9904 0498.

For information on library services and resources for people with a print disability, contact the National Information Library Service (NILS): www.nils.org.au; tel: (02) 9334 3333 (Sydney) or (03) 9864 9600 (Melbourne); fax: (02) 9334 3428 (Sydney) or (03) 9864 9600 (Melbourne).

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Australian Copyright Council

The Australian Copyright Council is a non-profit organisation whose objectives are to:

- assist creators and other copyright owners to exercise their rights effectively;
- raise awareness in the community about the importance of copyright;
- identify and research areas of copyright law which are inadequate or unfair;
- seek changes to law and practice to enhance the effectiveness and fairness of copyright;

- foster co-operation amongst bodies representing creators and owners of copyright.



Australian Government



The Australian Copyright Council has been assisted by the Commonwealth Government through the Australia Council, its arts funding and advisory body.

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