

Flexible Fair Dealing

Q: Who can use section 200AB?

A: Teachers and staff in schools can use s 200AB provided the proposed use:

1. Is not covered by an existing licence or exception
2. Is for the purpose of educational instruction and is not for profit
3. Is not "unreasonable"

Q: What types of copyright material does section 200AB cover?

A: You cannot rely on s 200AB for a use that would be covered by another exception or statutory licence. That limitation effectively means that s 200AB will not be of any use for television or radio broadcasts (which are covered by the statutory licence). Nor will s 200AB be of use in most cases where the copyright material that you want to use is a text based work (such as a book, play, poem, journal article or newspaper) or an artistic work (such as a photograph, diagram, cartoon, or illustration), as this content is also covered by the statutory licence. (There are limited exceptions to this: if your intended use is to translate or perform a text based work, s 200AB may apply. That's because these uses are not covered by the statutory licence.)

This means that s 200AB will mostly be used the following types of copyright material - provided that you comply with the conditions applying to s 200AB:

- Apps
- sound recordings (CDs, podcasts, MP3 files)
- films (online and in VHS/DVD format)

Q: What does section 200AB allow me to do with copyright material?

A: Provided that your use satisfies the requirements set out in section 1 above, you can rely on s 200AB for all kinds of uses, including:

- Copying the content
- Communicating the content (e.g. emailing or uploading to the school intranet)
- Make an adaptation (e.g. translating from one language to another)
- Performing a play etc.

Q: How do I know if my use is for the purposes of giving educational instruction?

A: Your proposed use must be for educational instruction. "Educational instruction" includes teaching (in a classroom or remotely), preparing to teach, compiling resources for student homework or research, and doing anything else for the purpose of teaching.

Note that "just in case" copying will generally not be sufficient, (eg "I'll copy this in case I need it sometime in the future"). You should have a particular instructional purpose in mind.

Q: Will my use still be for educational instruction if I charge a cost recovery fee?

A: Yes. Cost recovery is OK. However, if you or your school is making a profit from the use or obtaining some other commercial advantage, you cannot rely on s 200AB.

Q: Can I circumvent to copy in reliance on s 200AB?

A: Yes. This was not permitted prior to 22 December 2017, but it is now permitted. Please also see Technological Protection Measures Information Sheet [<http://www.smartcopying.edu.au/information->

For further information, contact NCU.

The Smartcopying website has been produced by the National Copyright Unit on behalf of the Copyright Advisory Groups (Schools and TAFEs).

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