

Why Australian schools need fair use

The lack of a fair use exception is affecting Australian schools in two ways:

- For some uses, the absence of a fair use exception means that Australian schools are simply prevented from using copyright material in the same ways as their counterparts in the US and other countries that have fair use.
- For other uses, the absence of a fair use exception means that Australian schools pay millions of dollars a year to use content such as free internet sites, in ways that cause no harm to copyright owners, and that would amount to a fair use in the US and countries.

Things that Australian schools are prevented from doing because we don't have fair use

Here's just a few examples from queries that have been directed to the National Copyright Unit:

- A school wanted to use five seconds of a film clip in a school performance. As this was not for "educational instruction", none of the existing educational exceptions or statutory licences applied.
- A school wanted to send parents thumbnail images of books, along with an excerpt from the book, to inform them on what their children were reading in class. None of the existing educational exceptions or statutory licences apply.
- A teacher wanted to submit student projects into a competition. None of the existing educational exceptions or statutory licences clearly apply.
- A teacher used one minute of the music from Gangnam Style and created a video using his own lyrics for a classroom activity. This classroom use was covered by one of the existing educational exceptions. But when the teacher was nominated for a teaching award, and media outlets wanted to show the video, none of the existing educational exceptions or statutory licences clearly applied to the additional use.

Australian schools pay millions of dollars a year for using free internet materials

Here's just a few examples of the uses that have been paid for under the Part VB statutory licence that would be free to use in most other countries:

- A teacher printing celebrity pictures and sports logos from the internet for students to draw in art classes. This content has been made freely available on the internet without any expectation of payment, but Australian schools pay under the Part VB statutory licence to use the content.

- A teacher printing a page from a website that had been set up by a student who wanted to make her own thesis publicly available. The website contained the words “Copyright 1998 Kelly Gardiner Feel free to cite with attribution”.
- A teacher copying a page from a blog that was headed “Over 180 FREE speech therapy worksheets, activities, and flashcards for speech-language pathologists, teachers, and parents.”
- A teacher copying an image from a publicly accessible Facebook page.
- A teacher printing entry forms so students could enter a computing challenge.
- A teacher taking a screenshot of a yellow raincoat from a Bunnings catalogue and including it in teaching materials.

Making the problem worse, in many cases, these uses are treated as amounting to multiple remunerable activities. For example, a teacher copying a page from a blog to use in class can result in the following remunerable activities:

- When the teacher downloads the blog post and saves this to a hard drive, this is treated as one copy.
- When the same teacher then displays the page to her class of 25 students on an interactive whiteboard, this is treated as one page made available 25 times.
- If the same students then print a copy for their own use, this is treated as one page copied 25 times.

Each of these copies is a potentially remunerable use of the content which has been made freely available, with the expectation that it will be used without payment.

Each of these uses would amount to a fair use in the US and other countries that have fair use.

No reasonable person could suggest that the livelihood of Australian authors would be harmed if Australian schools could rely on fair use for these kinds of uses.

Schools are **not** asking for fair use in order to avoid having to pay when they copy the work of Australian authors and other creators. Australian schools simply want to avoid this staggering waste of public funds, and ensure that copyright funds are directed appropriately - to Australian authors, publishers and artists.