

# Fair use in schools – responding to teacher concerns

You may have seen recent media reports of teachers speaking out publicly against fair use. If so, you might be wondering why the Smartcopying website contains material supporting fair use. We hope that this answers any questions you may have.

(If you're not sure what fair use is, start [here](#))

## Why are some teachers publicly opposing fair use?

The teachers who have spoken out against fair use have done so based on what we believe to be a misunderstanding about how fair use would work. They have been told by Copyright Agency that fair use would mean that schools would no longer pay authors and other creators when they copy content for their students - in other words, that fair use would mean that schools would simply use this content for free.

It's not surprising that Copyright Agency's claims have raised concerns with teachers. **If** they were true, textbook authors and other creators would potentially be facing a loss of their livelihood if the current copyright regime was replaced with fair use. This would not be a good outcome for authors or schools.

The good news for these authors and creators is that Copyright Agency's claims are ***simply not true***.

## Would authors still receive payment when their work is copied by teachers?

Yes!

Australian schools pay over \$700 million each year to buy educational resources, including textbooks. None of this would change if fair use is introduced.

Australian schools also pay Copyright Agency approximately \$65 million each year for copying carried out by teachers. Some of what's being copied is chapters from novels, textbooks and other teaching resources, as well as short stories and poems.

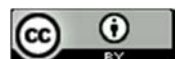
Fair use will have **no impact** on this whatsoever. Schools pay for this copying today, and they will continue to pay for it if fair use is enacted.

## But I've heard that one of the reasons that schools want fair use is so they can pay less to copy?

That's partly true.

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National Copyright Unit on behalf of the  
Copyright Advisory Groups (Schools and TAFEs)



As well as the kind of content we've just discussed - ie novels, textbooks, short stories and poems - teachers also copy a great deal of content from the internet that no one ever expected to be paid for. In many cases, it's not even clear who actually owns the copyright in this content. You might be surprised to know that schools are currently paying Copyright Agency **millions of dollars a year** for this copying.

It's true that one of the reasons that schools want fair use is so that they no longer have to pay to copy this kind of content. Here's just a few examples of the kind of content that we are talking about:

- A teacher printed celebrity pictures and sports logos from the internet for students to draw in art classes. This content had been made freely available on the internet without any expectation of payment, but because Australia doesn't have a fair use exception, Australian schools are not permitted to use it without payment.
- A teacher printed 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*". The student who wrote the thesis clearly did not want or expect to be paid, but because Australia doesn't have a fair use exception, Australian schools are not permitted to use it without payment.
- A teacher copied a page from a blog that was headed "Over 180 **FREE** speech therapy worksheets, activities, and flashcards for speech-language pathologists, teachers, and parents." The author of the blog was giving this content away for free, but because Australia doesn't have a fair use exception, Australian schools are not permitted to use it without payment.
- A teacher copied an image from a publicly accessible Facebook page. There was clearly no expectation of payment, but because Australia doesn't have a fair use exception, Australian schools are not permitted to use it without payment.
- A teacher printed entry forms for students to enter a computing challenge.
- A teacher took a screenshot of a yellow raincoat from a Bunnings catalogue to use in a classroom presentation. Although the catalogue was made freely available to all Australians, in the absence of a fair use exception, Australian schools are not permitted to use it without payment.

Permitting Australian schools to rely on fair use for these activities would cause no harm to authors and creators, but it would bring to an end this staggering waste of public funds.

**So who gets the money when schools pay to use freely available internet content?**

Good question!

Most of it is not going to authors. Schools recently became aware that between 2013 and 2016 Copyright Agency retained **\$15 million** that it collected from educational institutions for this kind of copying. Copyright Agency was able to justify this because it was unable to identify or locate the rightsholder. Copyright Agency stated it would use the money to lobby against fair use: see Note 14 to Copyright Agency's 2015/2016 Directors Report and Financial Report [here](#). In other words, schools have been paying millions of dollars a year for Copyright Agency to lobby against reforms that would cause no harm to authors. The Productivity Commission has recommended that collecting societies be required to return money they collect from schools if they are unable to identify or locate the rightsholder.

### Is it just about money?

Not wanting to pay for uses that cause no harm to authors and creators is just **one** of the reasons why schools are asking for fair use. The other reason is that the existing exceptions and statutory licences simply don't apply to some of the ways that teachers want to use copyright content.

Did you know that Australia's copyright laws are so out of date they don't deal with technologies such as cloud computing, text & data mining or machine learning? Fair use will ensure these technologies can be used in Australian schools when it is fair to do so – and will not impact on copyright owner licence payments in any way.

Did you know that there is no exception that permits a school to use small amounts of copyright material when engaging in collaborative projects with the broader community, or with business and industry? Fair use would fix this. If the use was "fair", it would be allowed. If it harmed rights holder markets, it would not.

### Teachers open letter regarding fair use

You may have seen an [open letter](#) from a number of teacher associations that suggested that fair use would be bad for authors and for schools. We think those teachers have been misled about how fair use would operate in schools and we want to set the record straight.

**Claim 1:** Fair use would "threaten an easy-to-use, effective copyright licensing system that allows teachers to access enormous amounts of content so they can focus on the task of enhancing the potential of students and creating lifelong learners."

**Our response:** It's true that the existing copyright licensing system allows teachers to access "*enormous amounts of content*", but a vast percentage of this content is content that no one ever expected to be paid for. This amounts to **millions of dollars a year**. Here's just a few examples of what we're talking about:

- A teacher printed celebrity pictures and sports logos from the internet for students to draw in art classes. This content had been made freely available on the internet without any expectation of payment, but because Australia doesn't have a fair use exception, Australian schools are not permitted to use it without payment.

- A teacher printed 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*”. The student who wrote the thesis clearly did not want or expect to be paid, but because Australia doesn’t have a fair use exception, Australian schools are not permitted to use it without payment.
- A teacher copied a page from a blog that was headed “Over 180 **FREE** speech therapy worksheets, activities, and flashcards for speech-language pathologists, teachers, and parents.” The author of the blog was giving this content away for free, but because Australia doesn’t have a fair use exception, Australian schools are not permitted to use it without payment.
- A teacher copied an image from a publicly accessible Facebook page. There was clearly no expectation of payment, but because Australia doesn’t have a fair use exception, Australian schools are not permitted to use it without payment.
- A teacher took a screenshot of a yellow raincoat from a Bunnings catalogue to use in a classroom presentation. Although the catalogue was made freely available to all Australians, in the absence of a fair use exception, Australian schools are not permitted to use it without payment.

No one else in the world is paying to use this content. Permitting Australian schools to rely on fair use for these activities would cause **no harm** to authors and creators, but it would bring to an end the staggering waste of public funds that results from schools having to pay to use this content.

**Claim 2:** Fair use would “impact on the current fair payments that are made to creators for the use of their copyright material, many of whom are educators. These payments help fuel the creation of world-leading Australian teaching resources, many of which are successfully exported.”

**Our response:** The education sector at the highest levels (ie the State, Territory and Commonwealth Education Ministers, as well as the National Catholic Education Commission and the Independent Schools Council of Australia) has given [repeated assurances](#) over a number of years that schools would continue to pay to use educational content in a fair use environment.

Australian schools currently pay Copyright Agency approximately \$65 million each year for copying carried out by teachers. Some of what’s being copied is chapters from novels, textbooks and other teaching resources, as well as short stories and poems. In other words, the kind of content that authors and creators expect to be paid for. Fair use will have **no impact** on this whatsoever. Schools pay for this copying today, and they will continue to pay for it if fair use is enacted. Claims to the contrary are simply untrue. Here’s why:

- Miss Jones teaches Maths. Her year 6 students are all required to purchase the prescribed textbook, but she copies a chapter from a different textbook and hands this out to her students. Currently, the school would pay for that under the statutory licence. That would **not change** under fair use. The school would continue to pay.
- Mr Rice teaches film studies to year 10 students. He copies a documentary that was broadcast on TV so that he can show it to his students. Currently, the school would pay for that under the statutory licence. That would **not change** under fair use. The school would continue to pay.
- Ms Arnold teaches English to year 12 students. She copies a chapter from a Peter Carey novel and distributes to her students. Currently, the school would pay for that under the statutory licence. That would **not change** under fair use. The school would continue to pay.
- Mr James teaches English to year 8 students. He copies a Les Murray poem and hands this out to his students. Currently, the school would pay for that under the statutory licence. That would **not change** under fair use. The school would continue to pay.

**Claim 3:** “Australian educators, publishers, teachers, authors and creators have a right to receive fair payment for their work.” Fair use would “greatly diminish these protections.”

**Our response:** We agree that all of these groups have a right to receive fair payment for their work. For the reasons we have outlined above, fair use would have **no** impact on this.

**Claim 4:** Fair use is “a threat to the overall quality of Australian education and its relevance for student and societal needs and means it may be even harder to make a living for the next generation of creators of Australian educational and creative content”.

**Our response:** We’ll say it again: schools will continue to pay when they use educational and creative content in Australian classrooms. Far from being a threat to the quality of Australian education, fair use would bring to an end the unjustifiable waste of public funds on content that no one ever expected be paid for and ensure that:

- the money paid by Australian schools is directed to authors and creators who create content for a living; and
- the money currently wasted on paying to use freely available internet materials can be returned to education budgets and used to teach Australian students.