

Performance and communication of works and audio visual material in class – What am I allowed to do?

Schools are allowed to perform and communicate copyright material in class under a free exception in the Copyright Act (section 28). If your use meets the conditions set out below, you can perform and communicate copyright material to your class for free and without the copyright owner's permission.

What is a performance?

A performance under the Copyright Act includes any mode of visual or aural presentation to an audience, such as:

- reading a story, news article, journal, handbook or other literary work;
- playing:
 - television programs from free to air and pay television;
 - radio programs from free to air radio and digital radio stations;
 - television programs from streaming services (eg Netflix, Stan, Presto)
 - a film in any format (eg DVD or a film from iTunes, Google Play, etc);
 - purchased material in any format (eg a film, audio book, television program or series);
 - online television programs from catch up television (eg ABC iView, SBS on Demand, 7plus);
 - sound recordings in any format (eg CD, DVD, cassettes, digital music from iTunes, Google Play);
- staging a performance of a play;
- displaying a diagram or plan on an overhead transparency;
- displaying content from a live website on an interactive whiteboard; or
- reciting a poem.

What is a communication?

A communication under the Copyright Act involves making copyright material available online or electronically transmitting copyright material.

'Making material available online' can include uploading material to a digital space for student access and use via password protected access such as:

- a shared drive/intranet (eg Microsoft 365); or
- content or learning management systems (eg Moodle, Blackboard, Brightspace or Equella); or
- to a closed class area on an education platform (eg Edmodo, Verso, Google Classroom or iTunes U).

'Electronic transmission' includes emailing, streaming or using an electronic reticulation system to share material (eg, libraries might have an electronic delivery system to transmit material centrally).

A communication **does not include**:

- playing or streaming live television or radio programs,
- bookmarking or sharing links to online film, videos, radio programs and games.

These activities are not copyright activities and therefore do not require a licence or permission.

When can I perform a work or audio-visual item in class?

Teachers and students can read or perform a literary, dramatic or musical work, or play sound recordings and films in class, where it is:

- in the course of education and is not for profit; and
- the people in the audience or class are giving or receiving instruction, or are directly connected with the place where instruction is given.

A class includes virtual classes and distance education students.

Note: this exception does not extend to playing films or sound recordings for non-teaching activities. See below for further information.

When can I communicate works and audio-visual materials in class?

Teachers and students can communicate:

- literary, dramatic and musical works;
- films and sound recordings;
- television and radio broadcasts (including works embodied in those broadcasts); and
- artistic works

to classes, to enable classroom performances and playing of sound recordings and films in class using new technologies.

A class includes virtual classes and distance education students.

What uses of copyright material am I allowed to make?

Some of the things you are allowed to do are:

- use an electronic delivery system to play a television program or film from a central DVD player in the library to a monitor in the classroom;
- use virtual classroom software to show copyright materials, such as films, to external students;
- recite a poem to students in a virtual class over Skype, Google Hangouts or other online communication platforms;
- play a film from a content or learning management system (such as Moodle or ClickView) in class;
- make a film available via a content or learning management system for access by distance education students for the purpose of a particular class; and
- display or project material to a class, such as a poem, on an electronic whiteboard, flat panel or data projector.

What about making material available online to students and staff?

Making material available online for students and staff to access involves communicating that material. It can also often involve making an intermediate copy to get the material in a form suitable for uploading onto the intranet or the content management system.

Section 28 allows the communication of content when it is made merely to facilitate the classroom performance of that content. Any content that is communicated should be removed at the end of the lesson. For example, to play a film to your class you are able to first upload that film to your schools learning or content management system (or to your schools intranet or education platform) to facilitate you being able to play the film to your class. As soon as the lesson is over though, you must remove the film from wherever you've uploaded it to.

There is some overlap between what Schools are allowed to do under section 28, the Statutory Licences and the Flexible Dealings provision in section 200AB.

| Type of use | Type of content | What is allowed | Copyright status |
|---------------------------------------|--|---|--|
| One off use (no storage beyond class) | All | Making material available online for students and staff to access. Material must be removed at the end of the lesson. | Free |
| Longer term storage | Works (eg, books, text, photographs, diagrams, scores, poetry) | Making material available online for students and staff to access is allowed under the Statutory Text and Artistic Licence . Note copying limits apply – for more information see http://www.smartcopying.edu.au/copyright-guidelines/education-licences-(statutory-and-voluntary-licences)/education-licence-b-statutory-text-and-artistic-licence | Paid for under the Text and Artistic Statutory Licence |
| Longer term storage | Off-air broadcasts (TV and radio) | Making material available online for students and staff to access is allowed under the Statutory Broadcast Licence . | Paid for under the Statutory Broadcast Licence |
| Longer term storage | Other audio visual content (eg, films and sound recordings) | Making material available online for students and staff to access may be allowed under the Flexible Dealings exception (section 200AB). See information sheets on Flexible Dealing and Format Shifting for more information. | Free |

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What uses of copyright material am I **not** allowed to make under s28?

There are some uses of copyright material that **you will not be able to make**, such as:

- format shifting or making additional copies of films protected by a technological protection measure, see: <http://www.smartcopying.edu.au/information-sheets/schools/technological-protection-measures>

- making material available online for students and staff to access where it is not for the purpose of showing the content in class
- making material available online where access is not restricted (eg by a password) to the students and staff who need the material
- keeping content available online for students and staff to access for longer than the time needed for the class (ie, for permanent or longer term storage).

Note: you may be able to make material available online for students and staff to access (eg on a password protected shared drive; intranet; content or learning management system; or cloud storage for student and staff access) for a longer period of time under a statutory licence or under the flexible dealings provision – see the table above;

- communicating or performing a work, such as a poem, or playing a film or sound recording:
 - to the parents, guardians or friends of students;
 - for a fundraising activity;
 - at a school excursion or camp where there is no teaching involved;
 - for non-teaching purposes in the school (eg, showing a film at lunch on a rainy day with no teaching involved, playing music at school concerts, dances or formals, sports days, fairs, etc).

Note: while section 28 will not apply to teachers and students performing and communicating music for non-teaching activities, schools may be able to do these activities under the APRA Agreement, see

- [http://www.smartcopying.edu.au/copyright-guidelines/education-licences-\(statutory-and-voluntary-licences\)/education-licence-c-apra-licence](http://www.smartcopying.edu.au/copyright-guidelines/education-licences-(statutory-and-voluntary-licences)/education-licence-c-apra-licence); and
- <http://www.smartcopying.edu.au/information-sheets/schools/performing-and-communicating-music-in-schools>.

There are also alternative sources of music such as Creative Commons licensed music which can be played for free see: <http://www.smartcopying.edu.au/open-education/open-education-resources/where-to-find-cc-licensed-material/where-to-find-cc-licensed-music>.

For further information see the SmartCopying website at www.smartcopying.edu.au or contact your local copyright manager. You can also contact the National Copyright Unit on (02) 9561 1204 or at email smartcopying@det.nsw.edu.au.