

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

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

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

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

A communication **does not include**:

- playing or streaming live television or radio programs,
- bookmarking and 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 to:

- 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 TAFEs are allowed to do under section 28, the statutory licences and the flexible dealings provision in section 200AB. The majority of TAFE institutes are no longer covered by the Statutory Broadcast Licence. Only a number of WA and NSW TAFE Institutes have the Statutory Broadcast Licence. If a TAFE institute is unsure whether it is covered by this licence, it can contact NCU.

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
Off-air broadcasts (TV and radio)		For the majority of TAFE institutes not covered by the Statutory Broadcast Licence making material available online for students and staff to access is not allowed. Further information on what these TAFE institutes are able to do can be found here: use-of-television-programs-and-film-by-tafe-institutes-without-a-screenrights-licence	
		For the few TAFE institutes covered by the Statutory Broadcast Licence making material available online for students and staff to access is allowed	Paid for under the Statutory Broadcast Licence
	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 s200AB and format shifting for more information.	Free

Teachers are encouraged to choose free materials, rather than materials that TAFEs pay to use, or materials licensed under Creative Commons whenever appropriate for their teaching needs. Further information on Creative Commons can be found here: <http://www.smartcopying.edu.au/open-education/creative-commons/creative-commons-information-pack-for-teachers-and-students> and here: [http://www.smartcopying.edu.au/open-education/open-education-resources/open-educational-resources-\(oer\)-a-toolkit-for-teachers-curriculum-and-elearning-developers](http://www.smartcopying.edu.au/open-education/open-education-resources/open-educational-resources-(oer)-a-toolkit-for-teachers-curriculum-and-elearning-developers).

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 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.
- Playing music or sound recordings for non-teaching purposes in the TAFE such as:
 - One-off events such as student fashion shows, graduations, award ceremonies, public concerts, fundraising event (note an events licence will be required from APRA and if sound recordings are also played from PPCA although if held at a venue which holds several events check if the venue is covered by a venue licence)
 - Playing a television in a public place, such as an office reception, student lounge, library (note a background music licence will be required from APRA and PPCA)
 - Playing background music in a public place such as reception areas, student lounges, libraries (note a background music licence will be required from APRA and PPCA)
 - Playing music in a fitness centre (note a fitness centre licence will be required from APRA and PPCA)
 - Playing music in a restaurant or cafe (note that a restaurant licence will be required from APRA and PPCA but if the restaurant/cafe is run by a third party it might be the responsibility of the third party to obtain the licence)

- Playing music out loud in institute offices where students and members of the public are not generally admitted (note a music in the workplace will be required from APRA and PPCA although if staff a only listening to music using personal earphones, no licence will be required)
- Playing music in hair salons, coffee kiosks/take-away food outlets (note that a general retail licence will be required from APRA and PPCA)

For further information on the licences mentioned above please see the following information sheet: <http://www.smartcopying.edu.au/information-sheets/tafe/apra-amcos-ppca-non-educational-use-music-licenses-for-tafes>

There are also alternative sources of music such as Creative Commons licensed music which can be played for free without the requirement to pay for a public performance licence from APRA or PPCA. For further information on alternatives please see the following information sheet: <http://www.smartcopying.edu.au/information-sheets/tafe/open-and-non-ppca-apra-music-for-non-educational-purposes-of-tafes>

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.