

Educational Use of Music in TAFE

This information sheet explains the types of educational uses of music which are allowed in TAFEs under exceptions in the Copyright Act 1968 (*Cth*). It deals with musical works (e.g. songs, melodies, jingles, film scores) and sound recordings (e.g. vinyl, CD, DVD, cassettes, MP3 files) to assist teachers and students at TAFEs in knowing when they are allowed to use music for educational purposes.

The areas covered are classroom performance and communication, flexible fair dealing (e.g. format shifting), fair dealing for research and study and other specific educational purposes. It also covers the use of digital music players and online music stores. Further information about non-educational use of music is provided at the end.

Performing and communicating music in the course of education

Teachers and students can perform and communicate music in class (including virtual classes and distance education students) under a special exception in s28 of the Copyright Act 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.

Under the Copyright Act, music is 'performed' where it is visually or aurally represented and 'communicated' where it is made available online (e.g. TAFE intranet, learning management system) or electronically transmitted (e.g. emailed or streamed).

Therefore, under s28, teachers and students can do the following in class:

- sing songs and play instruments;
- play sound recordings (e.g. using a tape/CD/DVD player, electronic reticulation system, learning management system, interactive whiteboard or virtual classroom software); and
- play a film (VHS, DVD or online film) which contains music using a DVD player, electronic reticulation system or learning management system.

Sound recordings or films which are placed on the intranet or a content management system to facilitate the classroom performance of that content should be removed at the end of the lesson or when it is no longer required for the class. There is some overlap in the storing of material on the intranet or a content management system under s200AB of the Copyright Act discussed below.

Teachers and students are not allowed to play a sound recording or a film to the parents of students or for non-teaching purposes such as at a graduation, fashion show, concert, etc.

Copying and communicating music for educational instruction

Flexible fair dealing under s200AB of the Copyright Act may allow teachers to use sound recordings of music for free in narrow circumstances for the purpose of educational instruction where other exceptions are not available. Common situations where flexible fair dealing of music might be applicable in TAFEs include:

- format shifting from vinyl, cassette or CD into digital format such as mp3; and
- uploading sound recordings onto password protected content repositories such as a learning management system provided the digital copy can only be viewed by teachers and students who are directly giving or receiving the instruction for which the copy has been made (i.e. one course as opposed to students enrolled in the entire institute).

Where a teacher decides to rely on s200AB, the following requirements **must** be met:

1. The original copy is a lawful copy.

This means that the institute or teacher bought the vinyl, CD or cassette or it is a genuine, non-pirate copy given to the institute or teacher.

2. The sound recording in digital format is needed for educational instruction.

Educational instruction includes using the material to prepare for class, to use in a classroom exercise, for compiling resources for homework, research or assessment tasks or any other activity connected with teaching.

Note: Creating an online music library 'just in case' the music may be needed for future exercises is not permitted. There must be a specific educational purpose in mind at the time the digital copy is made.

3. The teacher is only copying what is needed for educational instruction.

Teachers should only use the particular tracks from sound recordings (CDs and Vinyl) which are necessary for educational instruction and they should remove the copies as soon as practicable after the lesson or assignment/homework exercise is completed.

Making a digital copy of an entire CD or record for educational instruction is unlikely to be permitted under s 200AB except in very limited circumstances (for example, where you cannot purchase the CD or record).

4. It is not possible to purchase the sound recording in digital format.

If it is possible to purchase the sound recording in a digital format, then you must purchase a digital copy rather than rely on s 200AB to format shift your vinyl, CD or cassette.

5. The use does not prejudice the copyright owner.

Prejudice to the copyright owner is likely to arise where:

- a. more than what is needed for educational instruction is copied;
- b. the copy track is not removed from the digital repository **as soon as practicable** once it is no longer required for class or homework exercises;
- c. the quality of the music is interfered with; or
- d. the copy track is placed on a content repository that is open to the public. Placing the copy track on a password protected content repository with access restricted to teachers and students of one class only is permitted provided you remove the copy from the repository or archive it to a personal folder as soon as practicable once no longer required for educational instruction.

Examples of uses of music that may fall under s200AB include:

- format shifting of a track from a CD to MP3 files for inclusion on a content management system to use in a teaching activity;
- copying a playlist of tracks from a home computer to school iPods to play as part of a music lesson;
- including short extracts of music in PowerPoint teaching aids;
- preparing an arrangement of a musical work for students to perform in a music class when you cannot buy the arrangement you need;
- copying a French language song that is not available for purchase in digital format to a digital file for inclusion in a podcast for a French language class;
- copying part of a track from an audio CD for use in an aural exam or assignment.

When relying upon s200AB it is good practice to do the following:

- label copies with the name of the sound recording, artist and the date it was copied e.g. Copied under s200AB Copyright Act 1968 'Let it be', The Beatles, 26 November 2014;
- ensure access is limited to a password protected repository that can be viewed by teachers and students of the course which is directly giving or receiving the instruction for which the copy has been made; and

- remove the copy from the repository or archive it to a personal folder as soon as practicable once no longer required for educational instruction.

Using digital music stores/players for educational purposes

Whilst digital media is increasingly used in TAFEs, the copyright exceptions for educational purpose use still apply. Digital music players such as iTunes, Windows Media Player, Google Play Music or Amazon Music enable teachers to play sound recordings from their computer or tablets to students in the classroom under s28 by playing digital files already available in the player's library of content or to play tracks from a CD in a computer's disc drive.

Digital music players can also be used to 'rip' or import tracks from a CD which involves format shifting from the CD to digital format. This is permitted in limited circumstances under s200AB as described above.

When buying digital content from online stores, such as the iTunes Store, Google Play or Amazon you must agree to the store's Terms of Use. The iTunes, Google Play and Amazon Terms of Use state that products purchased from the store can only be used for 'personal, non-commercial use'. This expression may not include 'educational use'.

There is a question as to whether these terms are enforceable and can prevent TAFE's from making educational use of the content.

Therefore, whilst there may be a risk that a TAFE might be said to be in breach of contract if it uses music downloaded from an online store for educational purposes, a TAFE would not infringe copyright if the s200AB or s28 exceptions set out in the Copyright Act applied.

The TAFE institute should consider whether it is comfortable relying on these educational use exceptions where the terms of use may not specifically allow educational uses. Guidance can be sought from the National Copyright Unit on (02) 9561 1267 or at email Praveen.Jeetun@det.nsw.edu.au.

Students copying and communicating music for fair educational use

Students can copy and communicate limited amounts of works under "fair dealing" without seeking the permission of the copyright owner. To rely on fair dealing, the use of the material must be fair and for the purpose of:

- research or study;
- criticism or review;
- parody or satire; or
- reporting the news.

Most of the copying students will do will fall under fair dealing for research and study. In some cases, a student will be copying material under both fair dealing for research and study and another fair dealing purpose such as parody and satire or criticism and review.

Overall, deciding whether a student's use is 'fair' can be difficult as the Copyright Act provides little guidance on what constitutes a 'fair' amount. You can decide if your copying or communication is 'fair' by considering the following factors:

- the purpose and character of the dealing
- the nature of the work
- the possibility of obtaining the work within a reasonable time at an ordinary commercial price
- the effect of the dealing upon the potential market for, or value of the work
- in the case where only the part of the work is copied - the amount and substantiality of the part copied in relation to the whole work

Deciding whether a student's use is 'fair' will be determined largely by how much of the work has been copied. For further information on students' fair dealing see the [Students and Copyright](#) information sheet.

As a general rule, students should only copy what is necessary for the fair dealing purpose to ensure that their use is 'fair'. For example, only copy a single track rather than the whole album if you only need to use the single track.

A student may be permitted to copy a whole work provided the whole work is necessary for the fair dealing purpose. For example, a student may need to copy an entire sound recording when preparing a critique of the artist's entire works.

When relying on fair dealing, students must:

- use extracts and not whole works. In rare cases, a whole work can be copied provided it is necessary for the fair dealing purpose; and
- always attribute the author and publisher where the source is known.
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Copying music for particular purposes connected to education

Limited Preservation Copying by Libraries

Libraries may make a copy of a sound recording in their collection to preserve the copy against loss or deterioration or replace a stolen copy in limited circumstances. The copy can only be made after an authorized officer of the library has, after reasonable investigation, signed a declaration stating that a new copy of the recording cannot be obtained within a reasonable time at an ordinary commercial price. If this condition is satisfied the library may then make a copy of the recording for its collection and also make it available online (e.g. on its intranet) provided access is secure and cannot be copied.

Reproducing and Adapting Musical Works by Hand

Under section 200(1)(a) of the Copyright Act, students and teachers in TAFE colleges are permitted to make new arrangements and transcriptions of musical works when this is done in the course of educational instruction and without the use of a machine that can make multiple copies such as a photocopier. This provision is designed to allow copying by hand onto or from a white board or chalk board and overhead transparency in the classroom. It also includes materials reproduced or adaptations made by students in the course of their instruction.

Reproductions for Examinations

Under section 200(1)(b) of the Copyright Act, TAFE colleges are permitted to reproduce musical works as part of a question to be answered in an examination or in an answer to an examination question e.g. a song played by a teacher or student on an instrument or a section of sheet music.

The use of sound recordings as part of an exam may be covered by s200AB discussed above e.g. playing part of a track in an exam.

Performing and communicating music for other purposes

The above exceptions do not apply to performing and communicating music for non-educational purposes such as:

- at one-off events e.g. award ceremonies, graduations, concerts, fashion shows,
- on hold on telephone lines,
- in the background in public places,
- in office areas; or
- in TAFE facilities such as fitness centres, cafes or restaurants.

TAFEs therefore need to either obtain individual licences from APRA/AMCOS and PPCA or directly from copyright owners. As an alternative TAFEs can use free for use music or non APRA/PPCA music.

Further information on non-educational music use see [APRA/AMCOS PPCA Non-Educational Use Music Licenses for TAFEs](#) for information about the current relevant licences and rates offered by APRA and PPCA for non-educational music use and [Open and Non-PPCA/APRA Music for Non-Educational Purposes of TAFEs](#) for information about open and free sources of music available under Creative Commons licences and non-PPCA/APRA alternative licences.

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 1267 or at email Praveen.Jeetun@det.nsw.edu.au.