

# The new flexible dealings exception – What am I allowed to do?

The *Copyright Amendment Act 2006* introduced an important new exception for Australian schools which allows Australian teachers to use copyright materials for free in narrow circumstances for the purposes of educational instruction (section 200AB of the Copyright Act).

Section 200AB is different to other exceptions in the Copyright Act because it does not specify exactly which copyright uses will and won't be permitted. Instead, it sets out a number of rules which teachers must use to decide whether a particular use of copyright material will be allowed.

This fact sheet explains how teachers can decide whether or not a particular use of copyright material may be permitted by section 200AB. The fact sheet is in three parts:

1. Some common uses of copyright material permitted by section 200AB
2. A flow chart to help you decide whether something else you want to do with copyright material will be permitted by section 200AB.
3. The answers to some frequently asked questions about section 200AB

## **Common uses of copyright material permitted by section 200AB**

Some common uses of copyright material in Australian schools will be permitted by section 200AB, such as:

- making a captioned version of a film for hearing impaired students when it is not possible to buy a captioned version of the film and you need to show the film in class
- converting 8-track or VHS tapes to DVD where it is not possible to buy a DVD of that film and the DVD is needed for teaching purposes
- copying a small extract of audiovisual material on a CD-Rom to disc or PowerPoint for classroom display
- compiling short extracts of audio-visual material for use in class (such as making a DVD of short extracts of several films for an English class) when it is not possible to buy a similar teaching resource
- 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

- including short extracts of music in PowerPoint teaching aids
- translating an extract of an Australian novel into Japanese (where you cannot buy a copy in Japanese) for use in a Japanese language class
- staging a free practice performance of a play on a drama syllabus for family and friends to allow drama students to practice for a performance assessment
- preparing an arrangement of a musical work for students to perform in a music class when you cannot buy the arrangement you need
- making a three-dimensional sculpture of an image as part of an art class exercise.

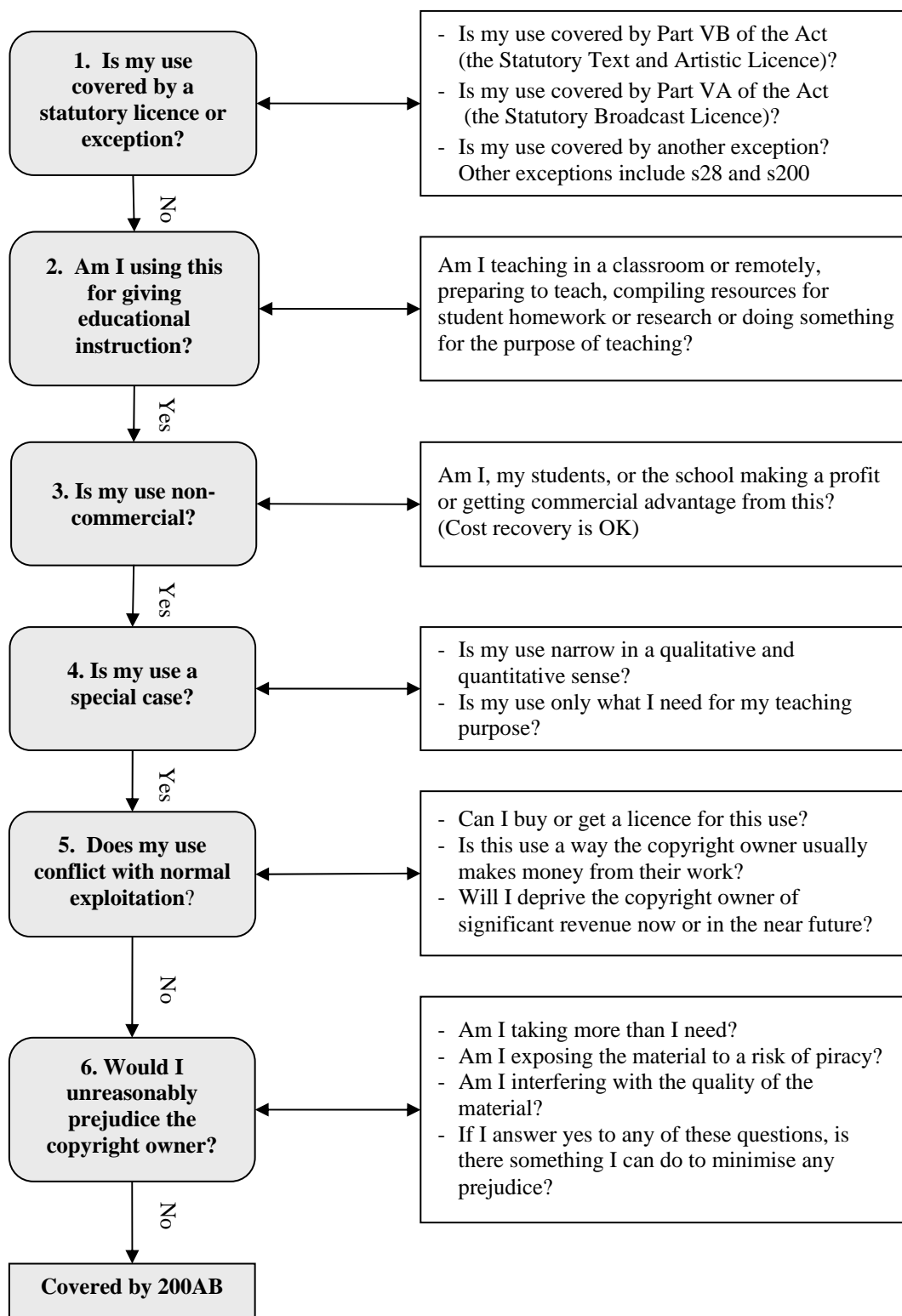
Note: If a work is protected by a copyright protection technology, you may not be able to copy material under this exception. It is not permissible to circumvent an access control TPM such as CSS on DVDs. For more information see “**Copyright Protection Measures and the Copyright Amendment Act 2006**” Information Sheet.

Note: These examples assume that the source copy of all materials has been legitimately acquired by the school.

## A flow chart to section 200AB – deciding whether your use is permitted

This flow chart shows you the decision making process you will need to follow if you want to decide whether what you want to do with copyright material will be allowed under section 200AB.

If you are unsure about whether your use is permitted, you should contact your local Copyright Manager for assistance (see **Contacts**).



## Frequently asked questions

**Q: Who can use section 200AB?**

A: Teachers and staff in schools or school administrations (such as an education department or Catholic Education Office), provided the use is for educational instruction.

**Q: When can I use section 200AB?**

A: You can only use section 200AB where another educational exception or statutory licence in the Copyright Act does not apply to what you want to do.

For example, if you want to make a scanned copy of a photograph, as this is covered by the statutory licence in Part VB of the Act section 200AB will not apply to you. However, if you want to copy an extract of a movie, this activity is not covered by another exception or statutory licence so your copying may be allowed under section 200AB. For more information on what copyright uses are covered by other licences or exceptions see the **National Copyright Guidelines**.

**Q: If I am a teacher does section 200AB automatically apply to me?**

A: No. There are five rules that apply to section 200AB:

1. You must be using the copyright material for the *purposes of giving educational instruction*.
2. Your use must be *non-commercial*.
3. The circumstances of your use must be a *special case*.
4. Your use must not *conflict with the normal exploitation* of the copyright material you are using.
5. Your use must not *unreasonably prejudice the copyright owner*.

See other frequently asked questions for more information about the words in italics.

**Q: What types of copyright material does section 200AB cover?**

A: All types of material.

This means that section 200AB may apply to all types of copyright material in hard copy and digital formats – text based works (such as books, plays, journals and newspapers), artistic works (such as cartoons, photos and illustrations), musical works (such as sheet music and scores), sound recordings (such as music CDs), television and radio broadcasts and films.

**Q: What does section 200AB allow me to do with copyright material?**

A: Section 200AB applies to all of the rights owned by a copyright owner. This means that section 200AB may let teachers copy and communicate (eg, email or upload to the intranet), as well as make an adaptation of a work (eg, translate from one language to another), publish or perform the material in public.

Note: some types of copyright material will almost always be protected by an access control TPM (such as commercially produced entertainment DVDs like 'The Castle'). You are never allowed to remove or disable an access control TPM for the purposes of section 200AB. For more information on what is an 'access control TPM' see the "**Copyright Protection Measures and the Copyright Amendment Act 2006**" Information Sheet.

**Q: How do I know if my use is for the purposes of giving educational instruction?**

A: Your use will be *for the purposes of giving educational instruction* if you need to use the material for teaching (including remote teaching), preparation for teaching, preparing materials for students to use for homework or research tasks or other uses that are for the purposes of teaching.

Note: "just in case" copying will not generally be for the purposes of giving educational copying (eg, "I'll copy that in case I need it sometime in the future"). You should have a particular instructional purpose in mind.

**Q: How do I know if my use is non-commercial?**

A: Your use will be *non-commercial* as long as you, your class or your school do not make a profit or obtain some other commercial advantage from your use of the copyright material. This does not stop you from charging a cost recovery charge in relation to the use (for example if you copy material onto discs and you want to charge students the cost of their disc).

**Q: How do I know if my use is a special case?**

A: This is a requirement that your use of the work be narrow in both size and scope. The more narrow your use of copyright material, the more likely that your use will be a "special case". In other words, using a small amount of something for a classroom activity is almost always going to be a special case. Copying more than what you need, or copying material "just in case I need it", where you don't know exactly how you are going to use it, might not be a special case.

**Q: How do I know if my use conflicts with the normal exploitation of the copyright material I want to use?**

A: Your use will conflict with the normal exploitation of the copyright work if you copy or use copyright material in circumstances where it is possible to buy the material from the copyright owner (including in a shop or online), or if you could obtain a licence for your use (eg, if you have ordinarily obtained a licence from the same publisher to use the same or a similar type of work).

See the flow chart for more information about how to decide whether your use conflicts with normal exploitation.

**Q: How do I know if my use will unreasonably prejudice the copyright owner?**

A: Your use will unreasonably prejudice the copyright owner if it hurts the copyright owner's interests in either an economic or non-economic sense in an unreasonable way.

For example, if you expose the copyright owner's work to a high risk of piracy (eg, uploading a music file to the internet) you are likely to be prejudicing the copyright owner. This might also be the case if you take more of the copyright material than you need (eg, you copy a whole music CD when you only need to copy 1 song).

See the flow chart for more information about how to decide whether your use will unreasonably prejudice the copyright owner.

For further information see the SmartCopying website at [www.smartcopying.edu.au](http://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 [delia.browne@det.nsw.edu.au](mailto:delia.browne@det.nsw.edu.au).