

# Copyright Implications of Content Management Systems: TAFE

## 1. What Is A Content Management System?

A Content Management System ('CMS') is a software application that enables teaching material to be sourced, managed, accessed and delivered in a digital environment.

There are many CMS available on the market including LAMS, Blackboard, myinternet and Moodle. Other services, such as ClickView, provide content delivery systems which allow TAFE institutes to add digital content to their digital library and provide the means for students and teachers to access this content.

## 2. CMS and Copyright

A CMS enables teachers and students to copy, communicate and store a variety of copyright materials digitally. This includes radio and television broadcasts, photographs, printed materials such as newspaper articles, podcasts and audio files. It also enables teachers and students to copy material stored on the system onto a flash drive or lap top or insert the material into word documents, powerpoint presentations or videos.

It is important to remember that just because an activity is available on a CMS, it does not mean that it is permissible under copyright law. Even where activities may be permissible under law, they may result in an increase in the copyright fees payable by the TAFE sector to collecting societies.

## 3. Teachers and CMS

Teachers may want to customise class material by copying and communicating materials digitally through a CMS. In order to do this, teachers must first find out whether the TAFE owns copyright in the material.

A TAFE institute or the department will own copyright in the material if a teacher employed by it has created the material for teaching purposes as part of their job. A teacher can use material in which the TAFE owns copyright in any way the TAFE authorises.

If the TAFE does not own copyright in the material, teachers must ask the following questions:

1. Does the TAFE have permission to use the material?
2. Does a statutory licence apply?
3. Does flexible fair dealing apply?

### **3.1 Does the TAFE have permission to use the material?**

The TAFE may have permission to use material on a CMS either because:

1. the TAFE has permission from the copyright owner to use it; or
2. the material has been made available under a licence which allows it to be used on a CMS (eg Creative Commons, The Learning Federation).

It is good practice to create a register on which to record the TAFE institute's permissions.

Products purchased or licensed by the TAFE may provide educational material that the institute is permitted to use in a CMS. Examples of products which may come with a resource library include Clickview, Commander System and SMART Boards.

A TAFE may want to seek permission from the copyright owner to use material on a CMS when the TAFE requires a substantial portion of the material or expects to continually use it.

### **3.2 Does a statutory licence apply?**

There are two statutory licences which permit teachers to copy and communicate material in a CMS. These include the:

- Statutory Text and Artistic Licence
- Statutory Broadcast Licence

All copying under these licences must be for an educational purpose and is remunerable.

Attachment A provides a summary of the licence schemes and the copying limits which apply. See the National Copyright Guidelines for information on the labelling and marking requirements under the licence schemes.

The below examples illustrate how the copying limits of the Statutory Text and Artistic Licence work in relation to material stored on a CMS.

*Example 1:* Teacher A has placed chapter 4 of a childcare textbook on the CMS. Teacher B wants to store chapter 6 of the same textbook on the CMS for use with their class. Teacher B is not allowed to put chapter 6 on the CMS until chapter 4 is removed.

*Example 2:* A Teacher scans a cartoon and uploads it onto the CMS on 1 February 2008 ready for the start of the TAFE year. At this time, she has made a 'reproduction' and a 'communication' under the Copyright Act, both of which must be paid for. At the end of 2008, the Teacher decides to leave the cartoon on the CMS as she will use it again for teaching in 2009. On 1 February 2009, the Copyright Act will deem that another reproduction and another communication of the cartoon have been made. This will happen for each year that the cartoon remains on the CMS.

### **3.3 Does flexible fair dealing apply?**

There are many types of copyright material that are not covered by the statutory licence schemes. Examples of such material include:

- Films (other than films copied from television under the Statutory Broadcast Licence)
- Audio materials such as CDs and MP3 files (other than audio materials copied from radio under the Statutory Broadcast Licence)
- Podcasts (other than podcasts of previously broadcast free to air television and radio programs available from the broadcaster's website under the Statutory Broadcast Licence)

A teacher may be able to copy and communicate such material under a new copyright exception known as flexible fair dealing.

Flexible fair dealing allows teachers to use copyright material for free in narrow circumstances for the purpose of educational instruction.

To find out whether you are able to use material on a CMS under flexible fair dealing, see information sheets: *The New Flexible Dealings Exception – What am I allowed to do?* and *Format Shifting and the Copyright Amendment Act 2006 – What am I allowed to do?* [Link to Information sheet]

## **4. Students and CMS**

If students copy or communicate material stored on a CMS (by emailing material to class members or downloading material on to a flash-drive), they cannot rely on the statutory licences.

The students' activity would have to be either:

- (i) directly licensed from the copyright owner; or
- (ii) permitted under the fair dealing provisions

to avoid any copyright infringement.

TAFE institutes should consider including terms of use policies and warning notices to minimise the risk to TAFE systems arising from individuals using the system.

## 5. Sharing Content

A CMS may allow TAFE institutes or entire training systems to share content stored on the system with other institutes. Sharing of content may be permissible under the statutory licences, but where material has been directly licensed, it can only be shared if the terms of the licence allow it.

## 6. Financial Implications

The TAFE sector pays a considerable amount of copyright fees to various collecting societies under the statutory licences.

TAFE should be aware that, in addition to CMS subscription costs, there are significant copyright costs associated with use of CMS. This is because CMS facilitate increased copying and communication of material, and copyright costs are therefore likely to increase. There are also significant ongoing costs to store material on a CMS. Under the statutory licences, any material stored on the system for more than 12 months is treated as a new copy and a new communication and both must be paid for again.

## 7. Practical Tips for Using CMS

Some practical tips to keep in mind when using a CMS include:

- Use material from websites and other resources that are free for education.
- Link to websites instead of copying content from the website into a CMS
- Review the content stored on the CMS regularly so as to avoid paying for the content again after a 12 month period

For further information see the SmartCopying website at [www.smartcopying.edu.au](http://www.smartcopying.edu.au) or contact your local copyright manager.

**ATTACHMENT A**

Type of Material being copied and communicated	Basis of right	Copying Limits
<p>Literary works (eg. books, newspaper articles, articles on websites, drawings, maps)</p> <p>Musical works (eg. sheet music)</p> <p>Dramatic works( eg. plays, scripts)</p>	<p>Statutory Text and Artistic Licence</p>	<p>In general, teachers can copy:</p> <ul style="list-style-type: none"> <li>• up to 10% of a literary, musical or dramatic work or one chapter of a book</li> <li>• one article in a journal, two articles if on the same subject matter</li> <li>• the whole work if it has not been separately published or is not commercially available within a reasonable time at an ordinary commercial price</li> <li>• whole artistic works</li> </ul> <p>For any copying made outside these limits, teachers would need to obtain permission directly from copyright owner.</p>
<p>Radio and television broadcasts</p>	<p>Statutory Broadcast Licence</p>	<p>No Limit</p>
<p>Existing copies of radio and television broadcasts</p>	<p>Statutory broadcast Licence</p>	<p><i>Copies made before 1990:</i> TAFE may keep these copies, however cannot make further copies.  <i>Copies made after 1990:</i> No Limit</p>
<p>Podcasts of previously broadcast free to air television and radio programs available on the broadcaster's website</p>	<p>Statutory Broadcast Licence</p>	<p>No Limit</p>