

Format shifting and the Copyright Amendment Act 2006 – What am I allowed to do?

What is format shifting?

"Format shifting" is a term used to describe copying content from one technological format to another. Some examples of format shifting include making a copy of a music CD to store on an iPod, or making a DVD or an electronic file copy of a VHS tape of a film.

Note: there has been lots of media attention recently about a new format shifting exception that was introduced in the Copyright Amendment Act 2006. This exception is a private and domestic use exception **and does not apply to schools**.

THE COPYRIGHT AMENDMENT ACT DOES NOT GIVE SCHOOLS A GENERAL RIGHT TO FORMAT SHIFT COPYRIGHT MATERIAL.

Schools have only very limited format shifting rights

Key points to note:

- **SCHOOLS ARE NOT GENERALLY ALLOWED TO FORMAT SHIFT THEIR WHOLE LIBRARY OR COLLECTION**
(eg, from video to DVD or from video to a content management system like My Classes or Clickview).
- **SCHOOLS ARE NOT ALLOWED TO FORMAT SHIFT IF MAKING THE FORMAT SHIFT COPY CIRCUMVENTS AN ACCESS CONTROL TECHNOLOGICAL PROTECTION MEASURE**
Most commercial DVDs are protected by an Access Control Technological Protection Measure (Access Control TPM). Schools are not permitted to circumvent this Access Control TPM to make a format shift copy (eg, by using software such as deCSS or DVD Shrink).
- **SCHOOLS NEED TO CHECK BEFORE FORMAT SHIFTING EACH INDIVIDUAL ITEM WHETHER IT IS POSSIBLE TO BUY THAT ITEM IN THE NEW FORMAT**
(eg, if you want to transfer two videos to DVD, you need to check whether you can buy each title in DVD before it is possible to make a DVD of that title. Or, if you want to transfer two videos into electronic file format, you need to check whether you can buy each title in electronic file format before it is possible to make an electronic file copy of that title).
- **'JUST IN CASE' FORMAT SHIFTING IS NOT PERMITTED**
Schools are not allowed to transfer resources eg, from video tape to a content management system 'just in case' it will be useful later on. Any format shifting needs to be done for the purpose of giving educational instruction in the near future.

Are schools ever allowed to format shift?

Some limited format shifting **is** permitted under the new 'flexible dealings' exception (new section 200AB).

A school or TAFE is allowed to format shift copyright material (eg, a video to DVD, a video to an electronic file format or music tape to CD) if:

1. The original copy of the material is lawful. This means that the school bought it, or it is a genuine (non-pirate) copy of the material that was given to the school.
2. The copy is being made for the **purpose of educational instruction** (eg, a teacher needs to use the material in class or students need it to do homework).
3. It is not possible to **buy the material in the new format** within a **reasonable time**.
4. You do not use the format shifted copy in a way that would **unreasonably prejudice** the copyright owner (such as putting it on the Internet or giving students access to an electronic file that they could copy).
5. You do not remove or disable an **Access Control TPM** to make the format shifted copy.

What do you mean by 'purpose of educational instruction'?

Your use will be for the purpose of 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 in connection with your teaching.

For example, you can format shift a film on VHS that you can't buy on DVD if you want to play the film on the DVD player in the classroom for a lesson. Or you could format shift a film on VHS that you can't buy in electronic file format if you want to play the film on your computer's media player in the classroom for a lesson. You can't format shift just in case you might want to play the film at some point in the future.

What do you mean by 'buying the material in the new format'?

Consider the example of a teacher who wants to copy a film from VHS tape to a DVD to play in class. The VHS tape is the 'original copy' and the DVD disc would be the 'new format'. The teacher is only allowed to format shift from VHS to DVD if s/he cannot buy the DVD in a reasonable time.

In other words, for a commercial DVD such as 'The Castle' which is available in most DVD shops or for order online, it will not usually be possible to make a format shift copy of the film. If the school wants to own a copy in DVD format, the school will have to buy a DVD copy. For older educational resources (for example, older documentaries) it may not be possible to buy a DVD copy of the film, so the teacher would be able to format shift these types of resources.

Teachers should always check whether it is possible to buy the copyright material in the new format within a reasonable time before making a format shift copy.

What do you mean by 'reasonable time'?

A reasonable time will depend on the type of material being used. However, as a guide, you should think about the time it would take you to buy that material from a retailer (either from a shop or to have it shipped to you from an online retailer).

For films (on video or DVD) and music (CD) a reasonable time is two weeks. Even remote schools should be able to order a copy and have it posted to the school in two weeks.

For films in an electronic file format, a reasonable time is 1 day, as you would buy the material online.

What do you mean by 'unreasonably prejudice'?

Your use will unreasonably prejudice the copyright owner if it hurts the copyright owner's economic or non-economic interests in the work you wish to format shift.

For example, if you want to format shift a film on video tape, you would unreasonably prejudice the copyright owner's interests in the film if you exposed the film to a high risk of piracy (eg, putting a copy of the film on the Internet or, possibly, if you handed out copies to students).

A good question to ask is "If I was a copyright owner, would I want someone to do this to my work?" If you answer no to that question, there is a good chance that you will be causing unreasonable prejudice to the copyright owner.

What is an Access Control Technological Protection Measure?

You must **never** circumvent an Access Control TPM to make a format shift copy under s200AB.

An Access Control TPM is a copyright protection technology used by copyright owners to control access to their content. The most common example is CSS, which is used on DVDs. Other examples are password controls and timed download tools (eg, that allow access to content for a certain amount of time).

Are there any marking or labelling requirements for format shifted copies?

No. There is no legal requirement to mark or label a format shifted copy (other than Part VA copies of broadcasts). This does not stop you from marking or labelling a copy if you want to. It is good practice to mark a format shifted copy with words similar to:

"Copied under section 200AB of the *Copyright Act 1968*".

Can a school copy its entire collection of educational resource films to store on a content management system?

A school will always need to ask the five questions under the heading 'Are schools ever allowed to format shift?' before it is allowed to format shift material. This means it is not possible to copy an entire collection without checking the answers to these questions in relation to **each item** that the school wishes to format shift. If it is possible to buy any of the resources in the school's collection in digital format, the school will not be allowed to copy that resource onto the content management system.

Can a school copy an educational resource film on videotape to another format if the resource is degrading?

Yes, as long as the other requirements are met (ie, that you need the resource for the purpose of educational instruction and you cannot buy a new copy in the form you need it). You cannot update a degrading resource "just in case", or if you could buy a copy of the film in the new format. You must also ensure that any copying does not circumvent an Access Control TPM.

In addition, a school library is allowed to copy a film held in its collection in a published form (ie, on commercial VHS tape) that has been damaged or has deteriorated for the purpose of replacing the original copy of the film (in the same format).

Note: a library is only allowed to copy films contained in the school's collection. The library cannot borrow material from another school to make a new copy.

Can I make a back up copy of an educational resource films to the same format?

Making a back up copy in the same format is not format shifting (transferring from one format to another, such as from VHS to DVD) so it will not be covered by this fact sheet.

In any case, you generally will not be able to make a back up copy. This is because you need to be making the copy for the purpose of giving educational instruction, not just as a back up. Also, you will not be able to make a copy where it is possible to buy a copy in the time required.

Can I format shift anything other than movies?

Yes, as long as you meet the five conditions under the heading 'Are schools ever allowed to format shift?'. For example, you can copy an old language lesson cassette onto CD (where you cannot buy the CD within a reasonable time).

You should note that schools have a licence from some music collecting societies to make certain uses of musical works and sound recordings. This licence will take precedence over the new section 200AB. Generally, this licence will allow you to make the following format shift copies:

| Format shift copy of music to be made | Does the licence apply? |
|---------------------------------------|---|
| Cassette to CD | Yes, if the copy is for a school event or for analysis as a part of a course of instruction |
| 8-Track to CD | Yes, if the copy is for a school event or for analysis as a part of a course of instruction |

If the format shift copy you want to make does not appear in the table above, you might be able to make the format shift copy of the music under s200AB:

| Format shift copy of music to be made | The licence does not apply, but: |
|---------------------------------------|--|
| Cassette to MP3 file or similar | Section 200AB may allow you to make the copy if you meet the five conditions under the heading 'Are schools ever allowed to format shift?' |
| CD to MP3 file or similar | Section 200AB may allow you to make the copy if you meet the five conditions under the heading 'Are schools ever allowed to format shift?' |
| MP3 file or similar to CD | Section 200AB may allow you to make the copy if you meet the five conditions under the heading 'Are schools ever allowed to format shift?' |

If you want to make a format shift copy of music under s200AB you will need to make sure that it is not possible to buy the material in the new format within a reasonable time. You should note that many songs and albums are now available for purchase via online music shops.

You also must never circumvent an Access Control TPM on a CD in order to make a format shift copy.

The schools music licence **does not** allow you to **upload** music MP3 files, or similar, to an intranet. This might be allowable under s200AB, depending on the application of the requirements set out in the Flexible Dealings Fact Sheet. *[insert link]*

(The schools music licence **does** allow you to **stream** music from an intranet. You must make sure, though that a password is required to access the stream and that staff and students cannot make copies of the streamed music).

For further information on the *Copyright Amendment Act*, please contact the National Copyright Unit on (02) 9561 1204 or email Delia Browne at delia.browne@det.nsw.edu.au.