1.15 Liability of schools, TAFE institutes and individuals for copyright infringement

Who is liable?

These people may be liable for copyright infringement:

- the student/teacher doing the actual copying or communication of the copyright work without the copyright owners' permission.
- the school/TAFE who authorises the infringement. For example the University of New South Wales was found liable for authorising breach of copyright by providing photocopiers in its libraries and failing to control or supervise what and how much was photocopied by students. See Hot Topics: Peer to Peer Networks for further information
- the employers (for example, the Department of Education) of a teacher who infringes copyright in the performance of their teaching duties.

Authorising copyright infringements

It is an infringement of copyright to authorise a copyright infringement made by someone else. This means that schools and TAFE institutes (and possibly Education Departments, Catholic Education Offices or Associations of Independent Schools) could sometimes be liable for copyright infringements done by students/teachers.

When deciding whether a school/TAFE has authorised a copyright infringement, some of the things a court will consider include whether the school/TAFE had knowledge of the infringements and whether the school/TAFE took any steps to stop potential infringements from occurring.

For example, a website operator has been found to have authorised copyright infringements committed by Internet users by providing hyperlinks to infringing material on the Internet.

Schools and TAFE institutes should take care not to:

- provide links on school/TAFE intranets to content that is known or likely to be infringing (eg pirate music or movie sites)
- allow students to download content from sites such as Limewire or YouTube where the content is likely to be unauthorised or 'pirate' (eg scenes from a currently screening Hollywood 'blockbuster’
- allow students to 'burn' copyright content unless it is clearly for research or study purposes
- store content on the intranet or learning management systems such as Clickview unless it is licensed or clearly covered by a copyright exception.

See 1.13: Copyright Exceptions for further information

a. Civil Remedies for copyright infringement

The remedies available to a copyright owner for copyright infringement include:
b. Criminal offences and penalties for copyright infringement

Copyright infringements which involve commercial dealings may also be criminal offences. For example, it is an offence to:

- make an infringing copy of a work or audio-visual material for sale or hire, sell or hire an infringing copy
- distribute an infringing copy with the intention of obtaining a commercial advantage or profit

A person found guilty of a criminal offence may be fined up to $93,500 and/or imprisoned for up to 5 years. Corporations may be fined up to five times the amount of maximum fines.

c. Offences relating to copyright protection technologies

The Copyright Act provides civil and criminal actions and remedies against:

- actions in relation to technological protection measures (TPMs)
- removal and alteration of Rights Management Information (RMI)
- unauthorised access to subscription television

i. Technological Protection Measures (TPMs)

a. What are TPMS?

TPMs are technological protection measures placed on copyright material to prevent unauthorised copying. Examples include software locks or password protection measures. There are two types of technologies protected by the Copyright Act:

- **Access Control TPMS** – technologies that copyright owners use to control access to copyright material (such as a password control or technology that manages how long you have access to an electronic file).
- **Copy Control TPMS** – technologies that prevent, restrict or inhibit you from doing an act that is covered by copyright laws (such as a lock that stops you from copying software to a different computer or a copy-prevention measure on a music CD).

Deciding whether a particular technological protection measure is an access control TPM or a copy control TPM is very difficult, and will depend on the precise technology being used. For example, the technological protection on a VHS tape is different from the protection on a DVD. If you are unsure about whether a technological protection measure is an access control TPM or a copy control TPM, you should contact your local copyright manager.

b. Prohibited acts

Students/teachers are not allowed to:

- use a circumvention device or service (such as a mod chip or decryption tool) to circumvent an access control TPM
- deal in circumvention devices (such as manufacturing or importing a device that circumvents an access control TPM or copy control TPM to give it to someone else, or making a device available via the Internet)
- deal in circumvention services (such as offering a service where you circumvent an access control TPM or copy control TPM for someone else).

It is not an offence to circumvent a copy control TPM (as opposed to an access control TPM).

For further information, see information sheet "Technological Protection Measures"