Commercial Activities in TAFE

1. Courses provided to commercial clients

Q1.1 Can a TAFE institute rely on the Statutory Text and Artistic Works Licence to copy or communicate course materials, if the course materials are provided at cost when delivering a professional development course for a commercial client?

Yes, a TAFE is permitted to rely on the Statutory Text and Artistic Works Licence where they are selling the course materials, but the materials can only be sold at cost.

‘At cost’ for the purposes of these FAQs means the TAFE can recover no more than:

1. the direct cost of the physical production of the materials and or other direct costs (for example, if a TAFE print room charges a price per page to make the copies or, in case of materials that are saved to a USB, the cost of the USB); and
2. other costs attributable to and incurred in supplying the materials to students (e.g. packaging, computer maintenance, occupancy costs).

Q1.2 Can a TAFE institute rely on the Statutory Text and Artistic Works Licence to copy or communicate course materials, when delivering a professional development course for a commercial client if a profit margin is placed on the course materials?

No, if materials copied and communicated under the Statutory Text and Artistic Works Licence are included in the class materials then a profit margin cannot be placed on those materials, and they can only be sold at cost.

Q1.3 Does it make a difference if the professional development course for a commercial client is delivered at the TAFE campus or at an external location?

No, it doesn't make a difference where the course is delivered.

Q1.4 Does it make a difference if the participants of the professional development course for a commercial client are given a TAFE student identification number when they are enrolled in or participate in the course?

No, it doesn't make a difference if participants have a student number or not.

Q1.5 Can the materials that are copied or communicated under the Statutory Text and Artistic Works Licence for a professional development course for a commercial client be provided to the commercial client after the course is delivered?

You can give the materials to those people participating in the course for the purposes of the course, including after the course has been completed. However, you cannot give the materials to a commercial client after the course is delivered for a purpose other than the course. This would not be covered by the Statutory Text and Artistic Works Licence.

2. Courses provided to overseas students

Q2.1 Can a TAFE institute rely on the Statutory Text and Artistic Works Licence to copy or communicate class materials for TAFE students based in other countries, where course delivery takes place overseas?

Yes, a TAFE institute can rely on the Statutory Text and Artistic Works Licence, provided that:

(a) the students are undertaking a course conducted by the Australian TAFE institute; and
(b) any print materials are copied in Australia, and digital materials are stored and uploaded to a server from Australia.

Q2.2 Does it make a difference if the overseas students are taught by staff of the TAFE institute, or by local (overseas) teachers?

No, it does not make a difference who teaches the course, provided that the course is run by the Australian...
3. **Hobby / non-accredited courses**

**Q.3** *Can a TAFE institute rely on the Statutory Text and Artistic Works Licence in preparing course materials for 'hobby courses' and non-accredited courses?*

Yes, if the course materials are provided at cost. The courses are still being provided as part of the TAFE institute's educational purposes and therefore it can rely on the Statutory Text and Artistic Works Licence.

4. **Full paying students**

**Q4.1** *A TAFE institute is running a course for 15 students. 12 of these students are paying a mainstream fee of $1,000 and 3 students are international students and paying full fees of $15,000 each. Can the TAFE institute rely on the Statutory Text and Artistic Works Licence in preparing the course materials for all 15 students?*

Yes, provided the materials are provided at cost. The course is still being provided as part of the TAFE institute's educational purposes and therefore it can rely on the Statutory Text and Artistic Works Licence.

**Q4.2** *Can a TAFE institute rely on the Statutory Text and Artistic Works Licence for a course which is fully costed (including profit margins and not subsidised by government), but where course materials are provided at cost and not sold or otherwise supplied for financial profit?*

Yes. The courses are still being provided as part of the TAFE institute's educational purposes, and the course materials are not being sold or otherwise supplied for financial profit, and therefore it can rely on the Statutory Text and Artistic Works Licence.

**Q4.3** *Can a TAFE institute rely on the Statutory Text and Artistic Work Licence for a course which is fully costed (including profit margins and not subsidised by government), but where the course materials are provided at cost plus an administrative fee?*

Yes, but only if the ‘administrative fee’ reflects the administration cost incurred in delivering the materials. It should be identified as a materials cost rather than an additional fee.

If the TAFE otherwise wishes to add an administrative fee to the price of its course materials, then it will need to remove materials copied and communicated under the Statutory Text and Artistic Works Licence and provide those separately on a cost recovery basis only, possibly as some sort of supplementary pack.

**Q4.4** *Can a TAFE institute rely on the Statutory Text and Artistic Works Licence for a course which is fully costed (including profit margins and not subsidised by government), and the course materials have not been itemised in a way that allows the TAFE institute to demonstrated that the materials are provided at cost?*

No, a TAFE institute can only rely on the Statutory Text and Artistic Works Licence if the course materials are sold at cost.

If it cannot demonstrate this, then it should not rely on the Statutory Text and Artistic Works Licence.

5. **Use of course materials by someone else**

**Q5.1** *Is a TAFE institute permitted to provide, for a fee, course materials, which include content copied or communicated under the Statutory Text and Artistic Works Licence to:*

(a) a TAFE institute in another jurisdiction; or
(b) a commercial entity

*for the TAFE or commercial entity to use to deliver their own course?*

No, assuming the materials are being supplied for a financial profit (and therefore not at cost). If the TAFE wishes to supply the course materials for a financial profit to another TAFE institute, then it will need to remove materials copied and communicated under the Statutory Text and Artistic Works Licence and provide those separately on a cost recovery basis only, possibly as some sort of supplementary pack. In that case, they could only be supplied to another TAFE institute.

The materials could not be supplied to a commercial entity.

**Q5.2** *Is a TAFE institute permitted to provide, for no fee, course materials, which include content copied or communicated under the Educational Statutory Licence to:*

(a) a TAFE institute in another jurisdiction; or
(b) a commercial entity, for the TAFE or commercial entity to use to deliver their own course?

It would permissible to provide the course materials to another TAFE institute, but not to a commercial entity.

6. Use of Creative Commons materials

Q6.1 If content is available under a ‘non-commercial only’ Creative Commons licence, does this allow a TAFE to use it in course materials for courses where students are charged based on Permitted Costs recovery basis only.

Yes. This would be allowed.

Q6.2 If content is available under a ‘non-commercial only’ Creative Commons licence, does this allow a TAFE to use it in course materials for courses that are funded by a commercial entity, but delivered by the TAFE for free or at cost to the commercial entity’s staff, TAFE students and non-TAFE students as vocational courses?

Yes. This would be allowed.

7. Partnerships

Q7.1 Where a TAFE and a private RTO share delivery of a course, can the TAFE rely on the Statutory Text and Artistic Works Licence to copy and communicate content for inclusion in the course materials?

Yes, provided the course is provided by the TAFE institute, the TAFE can rely on the Statutory Text and Artistic Works Licence material can be used by the TAFE institute. Note that whether the private RTO can rely on the Statutory Text and Artistic Works Licence will depend on whether it has a Remuneration Notice with the Copyright Agency which allows it to benefit from the Statutory Text and Artistic Works Licence.

Q7.2 Where a TAFE offers vocational courses to school students, can the TAFE rely on the Statutory Text and Artistic Works Licence to copy and communicate content for inclusion in course materials?

Yes, provided the course materials that include the Statutory Text and Artistic Works Licence material are free or sold at cost.

The Smartcopying website has been produced by the National Copyright Unit on behalf of the Copyright Advisory Groups (Schools and TAFEs).

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