

# Text & Graphics Educational Copying

## Permission of the copyright owner

### By agreement

Copyright owners may agree to material being copied beyond the limitations imposed by the Copyright Act. This may occur by writing to copyright owner seeking permission. The request should specify should cover the extent of the copying and/or the number of copies. It is good practice to obtain permission in writing (letter, email, fax). The copyright material itself may contain statements regarding copying. Some Web pages have such a statement. Such statements should be included in the copy made.

Permission to copy might also be granted by academics or others in relation to their work, if they own the copyright. Note, however, that the mere fact that a person is the author of work does not mean that he or she retains copyright. This may have been assigned to the publisher of the work.

### By licence

Higher Education Providers, particularly IBIBS libraries, enter into licence agreements with the owners of copyright material. IBIBS libraries lease access to databases and electronic journals. In the first instance, these licences are subject to contract law. In many cases they contain clauses covering the copying of material that exclude the jurisdiction of the Copyright Act. There is a summary of copying provisions for licensed electronic resources at IBIBS Library.

In the absence of such clauses, the Copyright Act applies

## Exceptions under the Copyright Act

### Multiple copies of an insubstantial portion

An insubstantial portion of a literary or dramatic work is defined as:

- one or two pages if it is hardcopy and less than 200 pages;
- no more than one percent of the total number of pages in the literary or dramatic work if there are more than 200 pages in hardcopy;
- no more that one per cent of the words in the work if the work is in electronic form

*But note the following provisos:*

- Copying or communicating the whole of a work will never fit within the insubstantial portion exemption. Accordingly, copies and communications of an entire article in a periodical publication, or the entire text of a pamphlet, cannot fall within the exemption.

- The exemption does **not apply at all to artistic or musical works, and radio and television broadcasts**. The copying of cartoons (and possibly graphs), as well as sheet music, will therefore fall outside the exemption.
- The copying or communication must be carried out on the premises of the IBIBS.
- A period of more than 14 days must elapse before a person relying on this provision can seek to copy any other part of the same work in reliance on it.
- Any parts of a work previously made available online in reliance on the insubstantial portion provision must be taken down before a person can make another part of the work available in reliance on this provision.
- The sections do not require that copying or communication done pursuant to the section include an acknowledgment of source. However, in any infringement action, the IBIBS will be better placed if it can substantiate the availability of the defence or exception. This will be a question of proof which will be made difficult if the source is not clear. It may be that as a matter of internal practice any copying or communication for which the exemption is to be should include a reference to its source. The need to take account of the right of attribution introduced by the moral rights changes to the Copyright Act will mean that it is important to attribute author and source wherever practicable in any case.

### **Copying for examinations**

Literary, dramatic, musical and artistic works are able to be copied without infringement as part of a question to be answered in an examination, or in an answer to such a question. This exception applies to copies only, **not** communications.

### **Fair dealing for the purposes of criticism or review**

A fair dealing with works and radio and television broadcasts does not infringe copyright in the work if it is for the purpose of criticism or review, whether of that work or another work, provided there is sufficient acknowledgment of the work copied. Any acknowledgment should identify the author (unless the author is anonymous or has agreed or directed that they not be named) and identify the work from which the copies are taken by its title or other description.

An example of how this provision might be relied on by IBIBS lecturer is where a work is copied for inclusion in a conference paper for the purpose of commenting critically on the material. Without the protection of the fair dealing provision this copying might (assuming a "substantial amount" was used) amount to an infringement of copyright. If instead of being shown at a conference the copy was communicated by up-loading it onto the academic's web-page (still for the purpose of commenting critically on the material) this might also amount to a fair dealing.

In order to obtain the protection of this section, the purpose of the dealing must be criticism or review. If the court considers that the real purpose of the dealing was to capitalise on publishing another creator's material, the protection will be lost.

This category of fair dealing will very rarely apply to multiple copying for distribution to students. But it may apply to copying you do for yourself or for other staff. It may also apply to communications between academics for the purpose of academic criticism and discussion.

## **Fair dealing for the purpose of research or study**

A fair dealing with works and radio and television broadcasts does not constitute an infringement of copyright if it is for the purpose of research or study.

If you are copying for yourself, for other staff or for distribution to on-campus students, the first question is whether the copy is made for the purpose of research or study.

Consider first the use or uses to which the copy is likely to be put. If it is part of the research function, such as preparing an article or book chapter, or part of an academic's general reading to maintain current awareness in his or her field, then it is very possibly made "for the purpose of research or study". Some teaching functions, such as preparation of new courses, or copying of an article or other material for an individual student or small group of students to study, could also fall within the test. But multiple copying for distribution or other use in teaching will not usually be considered to be "for the purpose of research or study", so be cautious before concluding that copying for teaching purposes does fall in this category.

It may be that in practice very few instances of communication will fall within this purpose, although a communication between two academics for the purpose of joint research will most likely satisfy the test.

Remember that once you have decided that a particular copying or communication is for this purpose, you still have to consider whether it is fair.

### **Copying for external students**

The exception to copyright infringement for fair dealing for research or study applies more strongly to enrolled external students. Any copying or communication of literary works (which includes print material other than artistic works or music and, possibly, plays) which is for the purposes of or associated with a course of research or study by an enrolled external student is permitted, provided it is fair (explained below). But you must be careful. If the material you copy for the external students includes artistic works, then you cannot assume that copying to be covered by the exception. The scope of the fair dealing provision as it relates to copying for external students is currently the subject of a legal challenge by CAL against the higher education providers. If CAL is successful, universities may be required to do some or all of this copying under the statutory licence.

### **Definition of fairness in relation to research or study**

For any copying or communication which is for research or study (or in the special case of external students for the purposes of or in association with a course of study by external students), you must ask whether the copying is "fair". Fairness is the paramount consideration. The Copyright Act contains some important guidelines.

### **Print material only**

If you copy:

- less than 10% of the pages or one chapter (whichever is the greater) of a published work in hardcopy, or

- less than 10% of the words of a published work in electronic form, or
- one article in a periodical,

and you are sure that you meet the test of "research or study" or use by external students, then that copying is taken to be fair, and is automatically protected by the Act.

### **All material**

For print material if you **copy** more than 10%, one chapter or one article, and for all other types of material, in determining whether the copying or communication is a fair dealing a court is directed to consider:

- the purpose and character of the dealing;
- the nature of the item;
- the possibility of obtaining the item within a reasonable time at an ordinary commercial price;
- the effect of the dealing upon the potential market for, or value of, the item; and
- in a case where part only of the item is copied - the amount and substantiality of the part copied or communicated in relation to the whole item.

Note that this provision applies to **copying only**, not communications. The Act provides no guidance on how much of a work can be communicated in reliance on the fair dealing provisions. It may be that the fair dealing exception is of little practical use with respect to communications.

### **Part VB statutory licence**

Part VB of the Copyright Act contains a statutory licensing scheme for the copying and communication of text and graphic works by higher education providers. IBIBS shall enter into an agreement to pay royalties to Copyright Agency Ltd (CAL). Most material copied for course / subject packs (course readers) will be covered by the agreement. For more information, go to Course Subject Guides / Packs and Copyright.

## **Nature and purpose of the copying**

The protection against infringement afforded by Part VB will be lost if the copy is, with the permission of the IBIBS, used for a purpose other than the educational purposes of the institution; made, sold or otherwise supplied for a financial profit; or given to an educational institution which does not at that time have a remuneration notice in force.

The 'educational purposes of the IBIBS' include:

- use to teach students;
- making the copy available to students as part of a course of study at the IBIBS; and
- retention in the Library or elsewhere (eg by a staff member) as a teaching resource
- the administration of students and courses

If copies are made in Australia for enrolled off-shore students, they are licensed copies (unless an exception applies). If the copies are not made in Australia, Australian copyright law will not apply.

## **Limits on the amount that can be copied or communicated**

The Act imposes limits on how much of a particular item can be copied.

### **Hard-copy limits**

For any copying or communication which is for research or study (or in the special case of external students for the purposes of or in association with a course of study by external students), the following limits apply:

- less than 10% of the pages or one chapter (whichever is the greater) of a published work in hardcopy, or
- less than 10% of the words of a published work in electronic form, or
- one article in a periodical

For information on the making of multiple copies, go to Course Subject Guides / packs.

### **Electronic copying and communication limits**

The limits are essentially the same as to hard-copy copying. However, there are some important differences: It also varies according to the format of the original material:

#### **1. Copying from hard-copy to electronic form**

For the scanning a chapter of a book or a journal article into digital form, the following limits apply:

1. in relation to articles contained in a periodical publication, the whole or part of an article can be copied;
2. in relation to a literary or dramatic work contained in a published anthology, and comprising not more than 15 pages of the anthology, the whole or part of that work can be copied. An example would be an essay contained in an edited collection of essays; and
3. in relation to all other copying of literary, dramatic, musical or artistic works, no more than 10 per cent of the pages in the edition, or one chapter (whichever is more), may be copied.

The IBIBS has issued a policy to manage its copyright responsibilities. All IBIBS staff are required to read and implement the policy. Central provisions of the policy are:

- Where possible, directly link to the Library's licensed journals articles and ebooks, rather than make another copy from a printed source, For more details, see linking to electronic resources.
- All digitised book chapters for which the IBIBS does not own the copyright **must** be located on the central server managed by the Library on behalf of the IBIBS.

- Access must be restricted to current IBIBS students and staff

Access to the digitised material is available from the Library's Course Materials website, as well as the IBIBS's elearning system.

## **2. Work being copied or communicated is already in electronic form**

Generally, few vendors allow making a copy of an article in a licensed product and housing the file on a local server. For more details, consult copying from licensed databases.

Where a book is out-of-print, it is usually possible for the Library to digitise the entire book.

## **Artistic works**

Under the Part VB licence, artistic works which are embedded in text for the purpose of explaining or illustrating the literary work (incidental artistic works), are treated differently from stand alone artistic works. Artistic works (other than incidental artistic works) that are in hardcopy form can be copied without further inquiry provided you are sure that they have not been separately published.

If an artistic work in hardcopy has been separately published, it can only be copied if the person who makes the copies or causes them to be made has satisfied himself or herself, after reasonable investigation, that copies (other than second hand copies) cannot be purchased within a reasonable time at an ordinary commercial price.

If the artistic work you wish to copy is available in electronic form, and the copy you are making is from the electronic form, you can copy or communicated the work in reliance on the Part VB licence without the need to inquire into whether it is available for purchase.

Incidental artistic works can be copied without the need to make the inquiries discussed above.

## **Notice to users (communication only)**

Each communication must contain the following, prominently displayed, notice:

COMMONWEALTH OF AUSTRALIA Copyright Regulations 1969  
WARNING

This material has been copied and communicated to you by or on behalf of Investment Banking Institute Business School pursuant to Part VB of the Copyright Act 1968 (**the Act**).

The material in this communication may be subject to copyright under the Act. Any further copying or communication of this material by you may be the subject of copyright protection under the Act.

Do not remove this notice.

This notice must be prominently displayed on each electronic copy made in reliance on Part VB and whenever a copyright work is communicated (i.e made available on-line or electronically transmitted) in reliance on Part VB. It **must** appear either before or at the same time as the material being communicated appears on the screen.

## **Steps to limit access (electronic copying & communication only)**

It is a requirement of the Part VB licence that the IBIBS take "all reasonable steps" to ensure that material electronically communicated in reliance on the licence can be received or accessed only by people entitled to receive or access it, eg staff and students of the IBIBS or of another IBIBS with a remuneration notice in place. Copyright works made available online in reliance on Part VB must not be available for access by the general public.

## **Monitoring the period material is available online**

Material which is communicated in reliance on the Part VB licence by being made available online can remain on-line indefinitely. However, there is deemed to be a fresh reproduction and a fresh communication at the end of each 12 month period that the material remains available online.

## **Sampling**

Each year, selected universities are "sampled" in order for CAL to appropriately distribute the licence fees to the copyright owners. There are separate mechanisms for sampling hardcopy, and electronic copying and communication.

## **Out of print material**

There are no limits to the amount which can be copied in reliance on Part VB if the material is out of print. It is also permissible to copy more than 10 per cent of a work if the person who is doing the copying is satisfied, after reasonable investigation, that the work is not available within a reasonable time at an ordinary commercial price - s 135ZL(2).

If the work being copied is in electronic form, the test is whether the work is unavailable in electronic form within a reasonable time at an ordinary commercial price - s 135ZMD (2).

## **More information**

For legal advice, general enquiries and training, contact IBIBS Legal Officer