



## Exceptions to copyright

There are many exceptions in the *Copyright Act* 1968. The table below sets out all the exceptions in the Act. It is based on a table created by the Copyright Law Review Committee for its Copyright and Contract Report in 2002 and later revised in the Attorney-General's Department's Issues Paper, *Fair Use and Other Copyright Exceptions* in 2005. It has been amended to include changes in the relevant legislation from 2005 to the present.

Section	Exception	Historical/Policy Justification
	FAIR DEALING	<p>The concept of fair dealing has been embedded in copyright through the common law.</p> <p>In order for a certain use of copyright material to be a fair dealing, it must fall within one of these exceptions in addition to being 'fair'.</p> <p>Whether a person's use of copyright material is 'fair' depends on the circumstances of each case.</p>
ss 40, 103C	Research or Study	Introduced for the purpose of promoting and facilitating education and research.
ss 41, 103A	Criticism or review	The exception is based on the assumption that copyright owners ordinarily expect to have their works subjected to criticism and review for the purposes of providing potential consumers with information about the works.

ss 42, 103B	Reporting news	Policy basis derived from the public interest in promoting the free flow of knowledge, ideas and information, evident in the case law.
ss 41A, 103AA	Parody or satire	Implemented following the Fair Use Review in 2006 to promote free speech and Australia's "fine tradition of satire" by allowing comedians and cartoonists to use copyright material for the purposes of parody or satire.
s 43(2)	Giving professional advice	<p>This exception was implemented for the purposes of facilitating the administration of justice, with the interest of assisting people to understand their legal rights and obligations.</p> <p>NB: The <i>Intellectual Property Laws Amendment (Raising the Bar) Act 2012</i>, amends ss 200(2) and (2A) of the <i>Patents Act 1990</i> to extend this privilege to registered patent attorneys.</p>
s 200AB	Use of works and subject-matter for certain purposes; that do not conflict with a normal exploitation of the work or other subject-matter or unreasonably prejudice the legitimate interests of the owner of the copyright.	Introduced following the Fair Use Review in 2006.
(2)	- by body administering library or archives	Based on the rationale that if schools, universities, libraries and archives are given the chance to use copyright material for non-commercial purposes they will be able to better assist their users in the online environment.
(3)	- by body administering educational institution	
(4)	- by or for person with a disability	
		Allows people with disabilities to access copyright material.

	COPYING BY LIBRARIES AND ARCHIVES	<p>The initial copying provisions implemented the 1959 recommendations of the Spicer Committee. They are similar to the UK provisions designed to remove the potential risk of librarians being held liable for copyright infringement when making copies for students or for other libraries. The 2011 Hargreaves Review of UK Intellectual Property Law recommended extending the exceptions in UK law to include methods of digitisation for archiving works.</p> <p>The exceptions facilitate education and scientific research making it easier to access specialist research material.</p> <p>The <i>Digital Agenda Act (2000)</i> updated the library and archives provisions allowing them to copy electronic material, reproduce hard copy material in electronic form and to communicate electronic material forming part of the library's and archive's collection.</p> <p>These amendments were implemented to allow the general community access to copyright material through the use of new technology whilst protecting the interests of copyright owners.</p>
ss 48A 104A	Copying by Parliamentary Libraries for MPs	Based on public interest in having an informed political process.
s 49	<p>Reproducing and communicating works by libraries for:</p> <p>Users for research and study (user requests)</p> <p>For other libraries or archives</p>	<p>An extension of the permission granted to a student to make a fair dealing copy of a work to a librarian acting on a student's behalf.</p> <p>In 1976, the Franki Committee argued that Australia's geographical constraints rendered</p>

s 50	(interlibrary copying for (document supply)	inter-library loans impractical due to cost and efficiency. This argument was accepted, and this exception was justified on practical grounds.
s 51, s110A	Reproducing/communication of old unpublished works, films or sound recordings in libraries or archives	Assists scholarly research and the dissemination of its results.
s 51AA	Reproducing/communicating works in Australian Archives	Assists in making the Australian Archives' collection more accessible throughout Australia.
ss 51A, 110B	Reproducing/communicating works for preservation and other purposes	Assists in maintaining the collection of a library or archives by enabling them to replace works, films and sound recordings that have deteriorated, been damaged, lost or stolen.
s 52	Publication of old unpublished works that are kept in libraries or archives and to which s51 applies	In recognising the value and historical significance of unpublished works this exception facilitates scholarly research and the dissemination of its results.
s 53	Extension of exceptions under ss48A-52 to illustrations that accompany works copied	This exception recognises the impracticality of excluding illustrations accompanying works when, copying or communicating works under the library and archives copying provisions.

	OTHER (TECHNOLOGY BASED) EXCEPTIONS	
ss 43A, 111A	Temporary Reproductions – in course of communications	Introduced to ensure that the technical processes which are part of the use of technology do not impede access to copyright material.
ss 43B, 111B	Temporary, Reproductions – as part of technical process of use	<p>This exception was added as a counterpart to other amendments that provide stronger copyright protection against the making of unauthorised temporary copies.</p> <p>It ensures that the normal use of non-infringing material is not threatened by the making of electronic copies of a transitory nature.</p>
ss 47AA, 110C	Reproduction for purpose of simulcasting in digital form	Introduced to allow broadcasters to comply with requirements contained in the <i>Broadcasting Services Act 1992</i> that material be simulcast in digital and analogue form as part of the introduction of digital television in Australia.
ss 116AN - AP	Exceptions to anti-circumvention sanctions	<p>These are exceptions to the sanctions concerned with the circumvention of technological protection measures.</p> <p>They are designed to ensure there is reasonable access to copyright material in electronic form.</p>
Part V Div 2AA	<p>Limitations on remedies available against carriage service providers</p> <p>Providing facilities or services</p>	<p>The <i>US Free Trade Agreement Implementation Act 2004</i> inserted Part V, Div 2AA into the <i>Copyright Act 1968</i> creating safe harbour provisions for carriage service providers.</p> <p>These exceptions are contingent upon compliance with the conditions set out in</p>

s 116AC	for transmitting for transmitting, routing or providing connections for copyright material, or the intermediate and transient storage of copyright material in the course of transmission, routing or provision of connections.	116AH.
s116AD	Caching copyright material through an automatic process.	
s116AE	Storing, at the direction of a user, copyright material on a system or network controlled or operated by or for the carriage service provider.	
s116AF	Referring users to an online location using information location tools or technology.	
	<i>Computer program exceptions</i>	
s 47B	Reproduction for normal use/study of a computer program	This exception ensures that computer programs can be used in their normal capacity. It also facilitates competition and growth in the computer software industry.
s 47D	Reproduction for making interoperable products	Introduced for the purpose of maintaining the international competitiveness of Australia's software developers.
s 47E	Reproduction for correcting errors	<p>Introduced to ensure that software users could promptly repair malfunctions in vital operating systems.</p> <p>At the time of introduction there was particular concern about the Y2K bug at the turn of the millennium, where error-free copies of computer programs may not have</p>

		been readily available.
s 47F	Reproduction for security testing	Security testing is seen as a legitimate activity.
	<b>STATUTORY LICENCES</b>	<p>The policy justification behind each licence differs.</p> <p>Statutory licenses are a practical means of remunerating copyright owners for use of their material without requiring individual licences.</p>
ss 47, 70, and 107	Ephemeral reproductions made for the purpose of broadcasting, where the maker is not the broadcaster	Promotes efficiency in broadcast programming.
Part III, Division 6	Recording of musical works	The statutory licence was seen as a means of moderating the perceived fear of high royalty demands of music copyright owners for consent to the recording of their works.
s 47A	Sound broadcasting of literary and dramatic works by holders of a print disability radio licence	Introduced to assist those with a print disability.
s 108	Public performance of sound recordings	Facilitates access to published sound recording repertoire.
s 109	Broadcasting of sound recordings	Facilitates access by broadcasters to published sound recording repertoire.

Part VA	Off-air copying of broadcasts (including underlying works, films and sound recordings) by educational institutions and institutions assisting persons with an intellectual disability (s 200AA allows free sound recording of a broadcast – but not any underlying works – by an institution assisting persons with an intellectual disability)	<p>Provides institutions operating under VA with the option to make off-air copies of any television program for educational purposes without having to seek permission from copyright owners.</p> <p>The Digital Agenda Act introduced amendments to ensure that Part VA was capable of adapting to future developments in technology.</p>
Part VB, Div 3	Reproduction and communication of works and other subject-matter by educational institutions and institutions assisting persons with an intellectual or print disability	<p>Introduced to allow educational institutions to make multiple copies of works for teaching; and to reduce the inefficiencies and high transaction costs involved in individually seeking permission from copyright owners.</p> <p>The Digital Agenda Act introduced amendments to ensure that Part VB was capable of adapting to future developments in technology.</p>
Part VC	Retransmission of free-to-air broadcasts	<p>The Digital Agenda Act introduced a statutory licence scheme to allow the owners of copyright in works, films and sound recordings embodied in free-to-air broadcasts to obtain remuneration for the retransmission of the broadcasts.</p> <p>Prior to this amendment, retransmitters were able to retransmit free-to-air broadcasts without the permission or payment of remuneration to either the owner of the copyright in the broadcast or the owner(s) of copyright in the underlying works, such as any music, written material or film.</p>



Part VII, Div 2	Use of copyright material for the services of the Australian and State and Territory governments	Designed to simplify the means of remunerating copyright owners in order to promote the procedures of government and the administration of justice.
	MISCELLANEOUS FREE EXCEPTIONS	
ss 43(1), 104	Acts done for judicial proceedings	These exceptions are designed to facilitate the administration of justice.
s 182A	Reproduction of statutory instruments and judgments	<p>This exception facilitates access to, and promotes an awareness of the law.</p> <p>It allows a single copy of the whole or part of a prescribed work (statutory and judicial material) to be made by or on behalf of a person for a particular purpose.</p>
s 44	Inclusion of works in collections for use by places of education	<p>Promotes education and research.</p> <p>The inclusion of short published works is permissible if, the collection is described in an appropriate place, the original work or adaptation was not published for the purpose of being used by places of education, the collection consists principally of matter in which copyright does not subsist and sufficient acknowledgement of the work or adaption is made.</p>
ss 44BA	Acts done in relation to certain medicine	<p>This exception was implemented by the <i>Therapeutic Goods Legislation Amendment (Copyright) Act 2011</i>.</p> <p>Facilitates access to product information regarding certain medicines.</p>

	<i>Reproduction and Related Uses</i>	
ss 44B, 112B	Reproduction of writing on approved labels on chemical products containers	Introduce in 1994 by the <i>Agricultural and Veterinary Chemicals (Consequential Amendments) Act</i> as part of Government policy on the marketing of generic agricultural and veterinary chemical products in Australia.
ss 47, 70 and 107	Reproduction of works and sound recordings by a broadcaster for purpose of broadcasting	In the course of licensed broadcasting, the making of 'ephemeral' reproductions is expressly recognised in the Berne Convention on copyright as a practical incident of broadcasting.
s 65  s 66  s 68	<p>Specified reproduction and publication of works in public places:</p> <ul style="list-style-type: none"> <li>- sculptures and works of artistic craftsmanship</li> <li>- buildings and models of buildings</li> <li>- publication of legitimate reproductions of artistic works in public places (or films referred to in s67)</li> </ul>	<p>It is considered reasonable to allow the creation and the legitimate reproduction of a painting, drawing, engraving or photograph of these works.</p> <p>It would be impractical to control this type of copying.</p>

s 67	Incidental filming or televising of artistic works	It is considered reasonable to allow the incidental inclusion of these works cinematograph film or television broadcast as it would be impractical to control this form of copying.
s 72	Reproduction of part of an artistic work in later artistic work	Accommodates the copying (reference, or quotation) of parts of an artistic work by the author in a later work.
s 73 (1), (2)	Reconstruction of buildings	A practical measure to allow the reconstruction of buildings.
s 111	Recording broadcasts for replaying at more convenient time (private and domestic use)	<p>This exception was introduced following the Fair Use Review in 2006. It recognised that the common consumer practice of 'time shifting' broadcasts should be permissible.</p> <p>The exception makes it legal for people to record TV or radio programs in order to play them at a more convenient time.</p>
s 112	Reproductions of editions of works	<p>This section allows the reproduction of the whole or part of an edition of a work without infringing copyright in the edition if the reproduction is made in the course of specific dealings with the work that is exempted under the Act.</p> <p>This provision was inserted to provide consistency within the Act, namely the dealings exempted under ss. 40-43, ss.49-50 and s. 51A and the copying of works pursuant to the statutory licences under Part VB and s. 182A.</p>
s 43C	Reproduction of works in books, newspapers and periodical publications in	<p>This exception was introduced following the Fair Use Review in 2006.</p> <p>This exception allows consumers to reproduce</p>

	different form for private use	material such as newspapers and books into different formats for their own private use (eg converting hardcopy books into electronic format).
s 47J	Reproduction of a photograph in different format for private use	<p>Introduced following the Fair Use Review in 2006, to recognise that common consumer practices such as format shifting with regards to certain copyright material should be permissible.</p> <p>The Attorney-General's Department reviewed the operation of s47J in 2008, recommending no change be made to the section at that time.</p> <p>This exception allows a photograph in hardcopy form to be reproduced in electronic form or a photograph in electronic form to be reproduced in hardcopy form for private use.</p>
s 109A	Copying sound recordings for private and domestic use	<p>This exception was introduced following the Fair Use Review in 2006, to recognise that format shifting of certain copyright material should be permissible.</p> <p>It allows people to transfer music from CDs they own onto their personal music players.</p>
s 110AA	Copying cinematograph film in different format for private use.	<p>This exception was introduced following the Fair Use Review in 2006, to recognise that format shifting of certain copyright material should be permissible.</p> <p>The Attorney-General's Department reviewed the operation of s 110AA in 2008, recommending no change be made to the section at that time.</p> <p>This exception is narrow in scope and only permits the owner of a videotape embodying a cinematograph film in analogue form to</p>

		<p>copy the film in electronic form for their own private and domestic use.</p> <p>The intent of this provision was to allow consumers to continue to be able to view films purchased on VHS without the need to buy an increasingly obsolete video cassette player.</p>
<p>s 51B</p> <p>s 110BA</p> <p>s 112AA</p>	<p>Making preservation copies in key cultural institutions' collections of:</p> <p>-significant works</p> <p>- significant recordings and films</p> <p>- significant published editions</p>	<p>Implemented in the 2006 reforms, with the idea that given the chance to use copyright material for non-commercial purposes, key cultural institutions will be able to better assist their users in the online environment.</p>
	<i>Performances, transmissions and broadcasts</i>	
s 28	Performance of literary, dramatic or musical works or other subject-matter in the course of educational instruction	Facilitates and promotes education.
s 45	Reading or recitation of a literary or dramatic work in public or for a broadcast with sufficient acknowledgment	To assist in the public dissemination of information.
s 46	Performance of literary, dramatic or musical works at premises where persons reside	The Spicer Committee concluded that it is logical to equate this type of performance given in a guesthouse to that a person might

	or sleep	receive in their own home.
s 106	Causing sound recording to be heard at a guest house or club	<p>The Spicer Committee concluded that it is logical to equate this type of performance given in a guesthouse to that a person might receive in their own home.</p> <p>This exception is narrower in scope and does not apply to performances for which an entry fee is charged, and is limited to non-profit organisations whose principal objects are charitable or are concerned with the advancement of religion, education or social welfare.</p>
s 199 (1)	Playing or showing in public of broadcasts of literary or dramatic works	To assist in the public dissemination of information.
s 105	Public performance and broadcasting of sound recordings that originate overseas	Aims to prevent performing and broadcasting rights being extended to foreign-origin sound recordings that were first published in Australia.
s 199(2)	Public performance of sound recordings by playing or showing of broadcast in public	Exemption recommended by the Spicer Committee.
s110(1), (2)	<p>Public performance of news films 50 years after the expiration of the calendar year in which the principal events depicted in the film occurred; and</p> <p>public performance of works contained in films for which the copyright has expired</p>	<p>Promotes public access to film footage of historical events.</p> <p>This ensures that where the exception allows the public showing of a film, the copyright in the underlying works is not infringed. (eg Music and speeches.)</p>

	OTHER USES	
s 110(3)	Use of sound recording made simultaneously with film soundtrack	This exception ensures that the playing of such sound recordings, does not infringe copyright in the film.
s 200(1), (2) & (2A)	Use of works and broadcasts for educational purposes	To assist in educational instruction.
ss 44A, C, D, E & F  ss 112A, C, D & DA	<p>Importation of infringing articles:</p> <ul style="list-style-type: none"> <li>- books and published editions (ss 44A &amp; 112A)</li> <li>- accessories to imported articles (ss 44C &amp; 112C)</li> <li>- computer programs (s 44E)</li> <li>- electronic literary or music items (ss 44F &amp; 112DA)</li> </ul>	<p>These provisions are not exceptions to the exclusive rights of copyright owners arising under s31(1) (works) and ss 85-88 (subject-matter other than works).</p> <p>They are a defence to actions under ss 37 and 102 which state that copyright in works and subject-matter other than works will be infringed by the importation of an article in Australia without the licence of the copyright owner.</p>

## Further information

For further information about copyright, our publications or seminar program, see our website – [www.copyright.org.au](http://www.copyright.org.au).

If you meet our eligibility guidelines, a Copyright Council lawyer may be able to give you free preliminary legal advice about an issue that is not addressed in an information sheet. This service is primarily for professional creators and arts organisations but is also available to staff of educational institutions and libraries. For information about the service, see [www.copyright.org.au/legal-advice](http://www.copyright.org.au/legal-advice).

## Reproducing this information sheet

Our information sheets are regularly updated - please check our website to ensure you are accessing the most current version. Should you wish to use this information sheet for any purpose other than your reference, please contact us for assistance.

## About Us

The Australian Copyright Council is an independent, non-profit organisation. Founded in 1968, we represent the peak bodies for professional artists and content creators working in Australia's creative industries and Australia's major copyright collecting societies.

We are advocates for the contribution of creators to Australia's culture and economy; the importance of copyright for the common good. We work to promote understanding of copyright law and its application, lobby for appropriate law reform and foster collaboration between content creators and consumers.

We provide easily accessible and affordable practical, user-friendly information, legal advice, education and forums on Australian copyright law for content creators and consumers.



Australian Government



*The Australian Copyright Council has been assisted by the Australian Government through the Australia Council, its arts funding and advisory body.*

© Australian Copyright Council 2012