

Creating Podcasts – What am I allowed to do?

What is a podcast?

A “podcast” is a digital media file that is made available on the Internet or an intranet. It usually comprises visual and aural copyright material, including film, sound recordings and pictures. Podcasts that include audiovisual material are sometimes called “vodcasts”.

Podcasts can be downloaded to computers and MP3/MP4 players such as Apple iPods or even mobile phones. Once downloaded, users can view/listen to a podcast wherever and whenever they choose.

This fact sheet covers the creation of podcasts in schools. For more information on using publicly available podcasts in schools, see the “**Using Podcasts – What Am I Allowed to Do?**” information sheet at www.smartcopying.com.au.

Teacher and student created podcasts

Teachers and students might create podcasts as part of classroom activities, for homework or for general school activities (eg updating parents on school events).

Teachers might create podcasts to:

- provide foreign language lessons to students;
- set out revision and homework tasks;
- facilitate self-paced and distance learning;
- assist students with reading difficulties or other disabilities.

Students might create podcasts to:

- deliver assignments;
- present news and interviews;
- perform music;
- write scripts or tell stories.

Schools should always obtain the written consent of students (or their parents/guardians for students under the age of 18) and other persons (eg performers or interviewees) appearing in a podcast.

Teacher created podcasts

Teacher-created podcasts may include copyright material owned by the school or relevant Educational Body (Education Department, Association or Diocese), as well as copyright material that is owned by third parties.

If material in a podcast is created by a teacher, the copyright in the podcast will generally be owned by the school or relevant Educational Body.

If the copyright in material to be included in a podcast is owned by the school or relevant Educational Body, the teacher/school can make any use of that material that it wishes.

As mentioned, podcasts may also include copyright material that is owned by third parties. Teachers may still be able to include this material in a podcast depending on whether:

- the copyright owner has given permission;
- a statutory exception applies, such as for fair dealing, flexible dealing or another statutory exception; or
- the statutory licence for text and artistic works (Part VB) applies (ie when you are including a literary, musical, dramatic or artistic work in your podcast).
- the statutory licence for television and radio broadcasts (Part VA) applies (ie when you are including part of a television or radio broadcast in your podcast)

If a teacher is making a teacher-created podcast available on the Internet or intranet and that podcast includes copyright material that is owned by third parties, the podcast should only be able to be accessed by staff and students.

Student created podcasts

Student created podcasts may include copyright material owned by the student, school or relevant Educational Body, as well as copyright material that is owned by third parties.

If material in a podcast is created by a student then the copyright in that material will be owned by the student. The student can make any use of that material they wish. However, if the school wants to use that material, it must obtain the permission of the student.

As mentioned, podcasts may also include copyright material that is owned by third parties. A student may still be able to include this material in their podcast depending on whether:

- the copyright owner has given permission; or
- a fair dealing exception applies.

Remember, if a student-created podcast will be made available on the Internet or intranet and that podcast includes copyright material that is owned by third parties, the podcast should only be able to be accessed by staff and students.

A sample letter to seek permission from a copyright owner to use their material in a podcast is provided below (Appendix A).

Has the copyright owner given permission?

The owner of the copyright in material you want to include in a podcast may give their permission differently, depending on where you are sourcing the material from, ie from the Internet, a CD-Rom, CD, DVD, Television or Radio (or another source).

Importantly, if the source material is protected by an access control technological protection measure (eg, on a commercial DVD or CD), then you cannot use that material.

If the material is available from the Internet, there are three situations where you will have permission to use the material:

- where the website says that educational use is permitted (eg a notice states the material is:
 - able to be used freely;
 - free for school or education use;
 - able to be used 'in your organisation').
- where the website has the NEALS logo, or is otherwise stated to be NEALS content, which means that schools can always use the material for free.
- where the teacher has received permission from the copyright owner to use the podcast (eg you may be able to get permission by asking the person or organization listed at the 'Contact Us' section on the website).

If the material is from another source, then you may use the material if you obtain permission from the copyright owner.

Teachers should become familiar with websites that allow free educational use. They include:

- The Learning Federation materials available from your schools' portal
- the Creative Commons website: www.creativecommons.org
- the Creative Commons educational material portal: <http://creativecommons.org/education/>
- Wikimedia Commons: http://commons.wikimedia.org/wiki/Main_Page
- Enhance TV: <http://www.enhancetv.com.au/>

Teacher-created podcasts

Flexible Dealing

Under the flexible dealings exception, teachers can use material for non-commercial teaching purposes if the use is not covered by another exception or statutory or voluntary licence.

To determine if material can be included in a podcast, teachers must assess whether:

- the proposed use is narrow,
- it would conflict with a normal way the copyright owner exploits the material, and
- the use would unreasonably harm the copyright owner.

Student-created podcasts

Fair Dealing

Material may be included in a podcast without the copyright owner's permission if a fair dealing exception applies. For student-created podcasts, the most relevant fair dealing exceptions are:

- research or study – eg. students downloading material from the Internet for inclusion in a podcast for their research or study
- criticism or review – eg. students including a short extract of material from a website in a podcast that reviews that website. The source material, the author and copyright owner (if different) must be identified
- parody or satire – eg. students copying extracts of webpages to include in a podcast that is a parody or satire.

Remember, to rely on a fair dealing exception the portion of the copyright material used must be reasonable having regard to the purpose of the use. Otherwise, the use might not be 'fair'.

Does a statutory licence apply?

Teacher-created podcasts

If a teacher wants to include text or artistic works in a podcast, the text and artistic statutory licence (Part VB) may be available. The statutory licence allows use of literary, musical, dramatic and artistic works for educational purposes. Teachers must include the following notice with or on their podcast (eg. in a pop up box where the podcast is made available on a school's intranet):

COMMONWEALTH OF AUSTRALIA
Copyright Regulations 1969

WARNING

This material has been reproduced and communicated to you by or on behalf of [insert name of institution] 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 reproduction or communication of this material by you may be the subject of copyright protection under the Act.

Do not remove this notice.

If a teacher wants to include television or radio broadcasts in a podcast, the television and radio broadcast licence (Part VA) may be available. The statutory licence allows use of television and radio broadcasts for educational purposes. Teachers must include the following notice with or on their podcast:

COMMONWEALTH OF AUSTRALIA
Copyright Regulations 1969

WARNING

This material has been copied and communicated to you by or on behalf of [insert name of institution] pursuant to Part VA 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.

For further information see the SmartCopying website at www.smartcopying.edu.au or contact your local copyright manager. You can also contact the National Copyright Unit on (02) 9561 1204 or at email delia.browne@det.nsw.edu.au.

Further Reading

Borja, Rhea R. ***“Podcasting Craze comes to K-12 Schools: Educators discover Value of Internet Audio Programs”*** Education Week, 7 December 2005.
<http://www.nsboro.k12.ma.us/ipod.htm>

Correy, S. ***“Music of the Blogospheres”***(Background Briefing)
<http://www.abc.net.au/rn/talks/bbing/stories/s1233531.htm>
Transcript of ABC Radio National Programme which gives a good general background to the rise of podcasting.

Educause Resource Centre ***“Podcasting”*** – links to resources for podcasting in education.
http://www.educause.edu/content.asp?page_id=645&PARENT_ID=788&bhcp=1

Meng, P. ***“Podcasting and Vodcasting: A White Paper”***, University of Missouri, March 2005.
http://edmarketing.apple.com/adcinstitute/wp-content/Missouri_Podcasting_White_Paper.pdf

Discusses technological aspects of podcasting as well possible educational uses and implications for education. Provides “How to Podcast”, “How to Vodcast” flowcharts and a resources list.

Campbell, G. ***“There’s something in the Air: Podcasting in Education”***, Educause, Nov/Dec 2005 pp 33 – 46.
http://www.bio.purdue.edu/mt/feeds/pod_pedagogy/archive/2006/01/theres_somethin.html

WWWtools For Education, ***“iPods and Podcasting in Education”***
<http://subscriptions.fasfind.com/wwwtools/m/8907.cfm?x=0&rid=8907>
Summarises the appeal of podcasting in education, the downsides (for example, ICT requirements) with multiple links to resources.

Appendix A

Sample Letter to Request Permission to use Copyright Work in a School Podcast

[Date]

Dear [Title and Surname]

Our school is producing a “podcast” on the topic of [Description of podcast].

A podcast is a digital file which can incorporate interviews, news items, sound recordings, music and audio-visual material. Student created podcasts are generally placed on school intranets for students and teachers to access at school and/or home and, in many cases, on [the Education Department or Educational Body's] publicly accessible websites to share with other students and the general public.

Source Material

We seek your permission to copy and communicate the following copyright material (“Work”), of which you are the owner, so that it can be included in this podcast:

[details of source material – type (eg music, interview, article, art work, other audio visual material etc) author/composer, date of publication/recording, title, publication, page, section and/or paragraph/s]

If you agree to grant the requested permission, please complete and sign the attached form and return a copy to [Name and Unit] at the following fax number [Insert Fax Number] or return by mail in the self addressed return envelope provided.

If you are not the rights holder of the Work, we would appreciate it if you would provide us with any contact information you have about the rights holder.

If you require any additional information regarding this request please contact [Name and Unit] on [Insert Phone Number] or [Insert Email Address].

Yours Sincerely,
[Name and Title]

Permission to Use Copyright Work in a Podcast

Work	<i>[Insert Name Or Description Of Work]</i>
Name	<i>[Insert Name]</i>
Company / Organisation	<i>[Insert Company Or Organisation Name]</i>
Address	<i>[Insert Address, If Known]</i>
Telephone Number/s	<i>[Insert Telephone Numbers, If Known]</i>
Fax Number	<i>[Insert Fax Numbers, If Known]</i>
Email address	<i>[Insert Email Address, If Known]</i>

I confirm that I am the rights holder of the Work, and I authorize the use of the above Work in a podcast produced by students at *[school]* without payment for the full term of the Work's copyright.

Please indicate the permission granted by ticking the appropriate box.

- ☐ The school's intranet for students and teachers to access at school, home and the school's publicly accessible website
- ☐ The school's secure intranet for students and teachers to access at school and home
- ☐ The school's secure intranet for students and teachers to access at school only

Please credit me as follows: _____

- ☐ Permission is not granted for the use of the material as described above.
- ☐ I am not the rights holder of the Work. The contact details of the rights holder are as follows:

In the case of individuals: information contained on this form has been collected in order to administer educational programs for students in the *[Department's or Educational Body's]* schools. This may be personal information and will be stored, used and disclosed in accordance with the requirements of the *Privacy Act 1988* (Cth).

Signature: _____

Date: _____