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

**Who is liable?**

These people may be liable for copyright infringement where they do not have the copyright owner’s permission or the benefit of an exception or statutory licence under the Copyright Act 1968 (Act):

* the student/teacher doing the actual [copying](https://smartcopying.edu.au/glossary/copy/) or [communication](https://smartcopying.edu.au/glossary/communicate/) or [public performance](https://smartcopying.edu.au/glossary/performance/) of the copyright work.
* the school/TAFE who is said to have authorised the infringement by the student/teacher.

**Note:** Schools/TAFE institutes may not be liable for photocopying done by students if they display the required copyright notice near copying equipment (eg photocopiers, scanners, CD and DVD burners). This will help to avoid liability for authorising infringements by people using their equipment where the [fair dealing](https://smartcopying.edu.au/glossary/fair-dealing/) exceptions do not apply.

* the employer (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 the doing of an act by a third person which infringes copyright. 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 infringement done by their students/teachers by authorising their students/teachers to do those acts.

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

It follows that, 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
* allow or ask students to download content from sites where the content is likely to be unauthorised
* allow or ask students to [copy](https://smartcopying.edu.au/glossary/copy/) copyright content unless it is clearly for their own research or study purposes or
* store content on the intranet or learning management systems such as Clickview unless it is [licensed](https://smartcopying.edu.au/glossary/licence/) or covered by a [copyright exception](https://smartcopying.edu.au/guidelines/copyright-basics/copyright-exceptions/).

**Safe harbours**

The Act contains a ‘safe harbour’ scheme (Part V Division 2AA of the Act). This scheme provides legal protection to schools and TAFEs in certain circumstances for copyright infringements committed by users of their IT systems and services.  The scheme does not protect departments or administrative bodies.

The Safe Harbour scheme ensures that schools and TAFE institutes are not exposed to unnecessary legal risk by providing Australian students with the tools to ensure they are fully equipped for the demands of an innovative digital workforce. As long as a school or TAFE follows the rules set out in the system, they can receive legal protection under the safe harbour scheme.

See [Safe Harbours](https://smartcopying.edu.au/safe-harbours/).

**Civil Remedies for copyright infringement**

The remedies available to a copyright owner for copyright infringement include:

* damages (monetary compensation for loss)
* additional damages (where the infringement has been flagrant)
* an account of profits (compensation based on profit)
* an injunction (a court order which prevents the infringer from further infringing) and
* delivery up (delivery up of any infringing articles or plates used to make the infringing articles).

**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](https://smartcopying.edu.au/glossary/copy/) of a [work](https://smartcopying.edu.au/glossary/works/) or [audio-visual materia](https://smartcopying.edu.au/glossary/audio-visual/)l for sale or hire, sell or hire an infringing [copy](https://smartcopying.edu.au/glossary/copy/) or
* 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.

**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)](https://smartcopying.edu.au/glossary/technological-protection-measure-tpm/)
* removal and alteration of Rights Management Information (RMI) and
* unauthorised access to subscription television.