**Podcasts – Creating**

**Creating Podcasts – What am I allowed to do?**

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 or
* assist students with reading difficulties or other disabilities.

Students might create podcasts to:

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

This information sheet covers the creation of podcasts in schools. For more information on using publicly available podcasts in schools, see: [Podcasts – Using](https://smartcopying.edu.au/podcasts-using/).

**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 audio copyright material, including pictures, film and [sound recordings](https://smartcopying.edu.au/glossary/sound-recordings/).

Podcasts can be downloaded to devices such as laptops, tablets or mobile phones. Once downloaded, users can view/listen to a podcast wherever and whenever they choose.

**Consent**

Schools should always obtain the written consent of students (or their parents/guardians for students under the age of 15) and other persons (eg performers or interviewees) appearing in a podcast.

**Teacher created podcasts**

***Using own content or third party content***

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 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.

For copyright material owned by third parties (ie someone else), teachers may still be able to include this material in a podcast if:

* the [Statutory Text and Artistic Works Licence](https://smartcopying.edu.au/guidelines/the-statutory-text-and-artistic-works-licence/) applies (for when you are including a [literary](https://smartcopying.edu.au/glossary/literary-works/), [musical](https://smartcopying.edu.au/glossary/musical-works/), [dramatic](https://smartcopying.edu.au/glossary/dramatic-works/) or [artistic work](https://smartcopying.edu.au/glossary/statutory-text-and-artistic-works-licence/) in your podcast)
* the [Statutory Broadcast Licence](https://smartcopying.edu.au/guidelines/education-licences/statutory-broadcast-licence/) applies (for when you are including part of a television or radio [broadcast](https://smartcopying.edu.au/glossary/broadcast/) in your podcast)
* a statutory exception applies, such as: [fair dealing](https://smartcopying.edu.au/guidelines/copyright-basics/copyright-exceptions/), [flexible dealing](https://smartcopying.edu.au/flexible-dealing/), [disability access exceptions](https://smartcopying.edu.au/guidelines/library-exam-and-disability-copying/disability-access-exceptions/), [exam copying exception](https://smartcopying.edu.au/guidelines/library-exam-and-disability-copying/copying-for-exams/) or another statutory exception or
* the copyright owner has given permission.

As a general rule, if a teacher is making a teacher created podcast available on the internet (eg on YouTube) or intranet (eg LMS) and that podcast includes copyright material owned by third parties, the podcast should only be able to be accessed by staff and students (eg through making the video private or making it available via password protected access).

**Can you rely on an educational use provision/exception?**

***Does a statutory licence apply?***

If a teacher wants to include [text](https://smartcopying.edu.au/glossary/text/) or [artistic works](https://smartcopying.edu.au/glossary/statutory-text-and-artistic-works-licence/) in a podcast, the [Statutory Text and Artistic Works Licence](https://smartcopying.edu.au/guidelines/the-statutory-text-and-artistic-works-licence/) (s 113P(1)) may be available. The statutory licence allows use of [literary](https://smartcopying.edu.au/glossary/literary-works/), [musical](https://smartcopying.edu.au/glossary/musical-works/), [dramatic](https://smartcopying.edu.au/glossary/dramatic-works/) and [artistic works](https://smartcopying.edu.au/glossary/artistic-works/) for [educational purposes](https://smartcopying.edu.au/glossary/educational-purpose/). Where practicable, teachers should 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):

|  |
| --- |
| [WARNING]  Some of this material has been copied [and communicated with you] in accordance with the statutory licence in section 113P of the Copyright 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](https://smartcopying.edu.au/glossary/broadcast/) in a podcast, the [Statutory Broadcast Licence](https://smartcopying.edu.au/guidelines/education-licences/statutory-broadcast-licence/) (s 113P(2)) applies. The [Statutory Broadcast Licence](https://smartcopying.edu.au/guidelines/education-licences/statutory-broadcast-licence/) allows use of television and radio [broadcasts](https://smartcopying.edu.au/glossary/broadcast/) for [educational purposes](https://smartcopying.edu.au/glossary/educational-purpose/). Where practicable, teachers should include the following notice with or on their podcast:

|  |
| --- |
| [WARNING]  Some of this material has been copied [and communicated with you] in accordance with the statutory licence in section 113P of the Copyright 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. |

***Flexible Dealing***

Under the [flexible dealing](https://smartcopying.edu.au/flexible-dealing/) 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 for a specific instructional purpose and
* the use isn’t ‘unreasonable’ (see [Flexible Dealing](https://smartcopying.edu.au/flexible-dealing/) information sheet).

***Fair Dealing***

Material may be included in a podcast without the copyright owner’s permission if a [fair dealing](https://smartcopying.edu.au/glossary/fair-dealing/) exception applies. For teacher-created podcasts, the most relevant [fair dealing](https://smartcopying.edu.au/glossary/fair-dealing/) exceptions are:

* 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](https://smartcopying.edu.au/glossary/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’.

For more information, see [Students and Copyright](https://smartcopying.edu.au/students-and-copyright/).

***Other Exceptions***

For information on other exceptions that teachers may be able to rely on, see:

* [Disability Access Exceptions](https://smartcopying.edu.au/guidelines/library-exam-and-disability-copying/disability-access-exceptions/) (for using material in podcasts for students with a learning disability) and
* [Copying for Exams: What am I allowed to do](https://smartcopying.edu.au/copying-for-exams-what-am-i-allowed-to-do/)(for using material in podcasts for exams).

***Material Protected by a TPM***

If the source material is protected by an access control [technological protection measure](https://smartcopying.edu.au/glossary/technological-protection-measure-tpm/) (eg, on a commercial DVD or CD), then you can only use that material if making a copy:

* under the [Statutory Text and Artistic Works Licence](https://smartcopying.edu.au/guidelines/the-statutory-text-and-artistic-works-licence/) or the [Statutory Broadcast Licence](https://smartcopying.edu.au/guidelines/education-licences/statutory-broadcast-licence/)
* under the [flexible dealing](https://smartcopying.edu.au/flexible-dealing/) exception in s 200AB of the Copyright Act
* under the [organisational disability exception](https://smartcopying.edu.au/guidelines/library-exam-and-disability-copying/disability-access-exceptions/) in s 113F of the Copyright Act or
* under the [fair dealing for disability exception](https://smartcopying.edu.au/guidelines/library-exam-and-disability-copying/disability-access-exceptions/) in s 113E of the Copyright Act.

For more information, see [Circumventing Technology Protection Measures](https://smartcopying.edu.au/circumventing-technology-protection-measures/).

***Has the copyright owner given permission?***

Teachers will need to seek permission if:

* the copyright owner has not already given them permission (an example of where the copyright owner may have already given their permission is in the terms and conditions with the material such as if it says ‘copying is permitted for educational purposes’) and
* they cannot rely on one of the statutory exceptions or licences.

If you need to seek permission, you should contact the copyright owner directly (see **Appendix A** for permission request template).

***Do I have permission to use materials from the internet?***

If the material is available from the internet, there are three situations where you will have permission to use the material (and therefore you won’t need to rely on the [statutory licences](https://smartcopying.edu.au/glossary/statutory-licences/) or exceptions above):

* 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 material has been openly licensed (eg under [Creative Commons](https://smartcopying.edu.au/creative-commons-oer/) (CC)) or is in the public domain.
* where the teacher has received permission from the copyright owner to use it in the podcast (eg you may be able to get permission by asking the person or organisation listed at the ‘Contact Us’ section on the website).

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

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

* [CC Search website](https://ccsearch.creativecommons.org/)
* [Google (Advanced Search)](https://www.google.com/advanced_search?hl=en)
* [YouTube (using Creative Commons filter in search under ‘Features’](https://www.youtube.com/)
* [Wikimedia Commons](http://commons.wikimedia.org/wiki/Main_Page).

For more information on where to find free educational use material, see [Where to find CC licensed material](https://smartcopying.edu.au/where-to-find-cc-licensed-material/).

**Student created podcasts**

***Using own content or third party content***

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.

If the podcast includes copyright material that is owned by third parties, a student may still be able to include this material in their podcast if:

* a [fair dealing](https://smartcopying.edu.au/students-and-copyright/) exception applies or
* the copyright owner has given permission.

***Fair Dealing***

Students will generally be able to rely on the fair dealing exception to include material in a podcast. 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; and
* [parody](https://smartcopying.edu.au/glossary/parody/) or [satire](https://smartcopying.edu.au/glossary/satire/) – eg students copying extracts of webpages to include in a podcast that is a [parody](https://smartcopying.edu.au/glossary/parody/) or [satire](https://smartcopying.edu.au/glossary/satire/).

Remember, to rely on a [fair dealing](https://smartcopying.edu.au/glossary/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’.

For more information, see [Students and Copyright](https://smartcopying.edu.au/students-and-copyright/).

***Has the copyright owner given permission?***

Students will need to seek permission if:

* the copyright owner has not already given them permission (an example of where the copyright owner may have already given their permission is when the material’s terms and conditions say ‘copying is permitted for educational purposes’ or if the material has been openly licensed under a [Creative Commons](https://smartcopying.edu.au/glossary/creative-commons-cc/) licence) and
* they cannot rely on one of the [fair dealing](https://smartcopying.edu.au/students-and-copyright/) exceptions (or they choose not to, because they want to use the podcast outside their studies (eg in their commercial arts practice).

If you need to seek permission, you should contact the copyright owner directly (see **Appendix A** for permission request template which you can adapt for your purposes).

**Further information**

For further information see the [Smartcopying website](http://www.smartcopying.edu.au/) or contact [your local copyright manager](https://smartcopying.edu.au/contact-us/). You can also contact the National Copyright Unit on (02) 7814 3855 or by email at [smartcopying@det.nsw.edu.au](mailto:smartcopying@det.nsw.edu.au).

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**Appendix A**

**Sample Email to Request Permission to Use**

**Copyright Work in a School Podcast**

**Example of wording to be sent as an email:**

Dear [name of copyright owner],

I am writing on behalf of the [school/TAFE/educational body] to request permission to use, reproduce [publicly perform – if podcast includes a musical work or sound recording] and communicate [name or description of podcast(s)] (**Podcast(s)**’) for [insert intended use] (‘**Purpose’**).

Will you please confirm via reply email that you own all of the intellectual property rights in the Podcast(s) and that you grant [school/TAFE/educational body] permission to use, reproduce [publicly perform – if podcast includes a musical work or sound recording] and communicate the Podcast(s) for the Purpose. And if so, please tell us how you would like to be attributed as author of the Podcast(s)?

If you are not the rights holder of the Podcast(s), 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]*.* If you require further information

regarding copyright, please contact the National Copyright Unit on 02 7814 3855 or [smartcopying@det.nsw.edu.au](mailto:smartcopying@det.nsw.edu.au).

Kind Regards,

[Name Title]