**Podcasts – Creating (TAFE)**

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

Teachers and students might create [podcasts](https://smartcopying.edu.au/glossary/podcast/) as part of classroom activities, for homework or for general TAFE activities (eg updating students on TAFE events).

Teachers might create [podcasts](https://smartcopying.edu.au/glossary/podcast/) 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](https://smartcopying.edu.au/glossary/podcast/) to:

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

This information sheet covers the creation of [podcasts](https://smartcopying.edu.au/glossary/podcast/) in TAFEs. For more information on using publicly available [podcasts](https://smartcopying.edu.au/glossary/podcast/) in TAFEs, see [Podcasts – Using  – What am I allowed to do? (TAFE)](https://smartcopying.edu.au/podcasts-using-what-am-i-allowed-to-do-tafe/).

**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](https://smartcopying.edu.au/glossary/podcast/) can be downloaded to devices such as laptops, tablets or mobile phones. Once downloaded, users can view/listen to a [podcast](https://smartcopying.edu.au/glossary/podcast/) wherever and whenever they choose.

**Consent**

TAFEs should always obtain the written consent of students and other persons (eg performers or interviewees) appearing in a [podcast](https://smartcopying.edu.au/glossary/podcast/).

**Teacher created podcasts**

**Using own content or third party content**

Teacher-created [podcasts](https://smartcopying.edu.au/glossary/podcast/) may include copyright material owned by the TAFE or relevant educational body (TAFE commission or government department), as well as copyright material that is owned by third parties.

If material in a [podcast](https://smartcopying.edu.au/glossary/podcast/) is created by a teacher, the copyright in the [podcast](https://smartcopying.edu.au/glossary/podcast/) will generally be owned by the TAFE or relevant educational body.

If the copyright material to be included in a [podcast](https://smartcopying.edu.au/glossary/podcast/) is owned by the TAFE or relevant educational body, the teacher/TAFE 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](https://smartcopying.edu.au/glossary/podcast/) if:

* the [Statutory Text and Artistic Works Licence](https://smartcopying.edu.au/guidelines/education-licences/the-statutory-text-and-artistic-works-licence/) applies (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/artistic-works/) in your [podcast](https://smartcopying.edu.au/glossary/podcast/))
* the [Statutory Broadcast Licence](https://smartcopying.edu.au/guidelines/education-licences/statutory-broadcast-licence/) applies (when you are including part of a television or radio [broadcast](https://smartcopying.edu.au/glossary/broadcast/) in your podcast). Note only WA TAFEs and Bradfield Senior College in NSW are covered by the [Statutory Broadcast Licence](https://smartcopying.edu.au/guidelines/education-licences/statutory-broadcast-licence/)
* a statutory exception applies, such as: [fair dealing](https://smartcopying.edu.au/glossary/fair-dealing/), [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](https://smartcopying.edu.au/glossary/podcast/) available on the internet (eg on YouTube) or intranet (eg LMS) and that [podcast](https://smartcopying.edu.au/glossary/podcast/) includes copyright material owned by third parties, the [podcast](https://smartcopying.edu.au/glossary/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/artistic-works/) in a [podcast](https://smartcopying.edu.au/glossary/podcast/), the [Statutory Text and Artistic Works Licence](https://smartcopying.edu.au/guidelines/education-licences/the-statutory-text-and-artistic-works-licence/) (s 113P(1)) may be available. The [statutory licence](https://smartcopying.edu.au/glossary/statutory-text-and-artistic-works-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](https://smartcopying.edu.au/glossary/podcast/) (eg in a pop-up box where the [podcast](https://smartcopying.edu.au/glossary/podcast/) is made available on a TAFE’s intranet):

|  |
| --- |
| [WARNING]Some of this material has been copied [and communicated to 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 at a WA TAFE or at Bradfield Senior College wants to include television or radio [broadcasts](https://smartcopying.edu.au/glossary/broadcast/) in a [podcast](https://smartcopying.edu.au/glossary/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](https://smartcopying.edu.au/glossary/podcast/):

|  |
| --- |
| [WARNING]Some of this material has been copied [and communicated to 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 |

For information about using films and television without relying on the [Statutory Broadcast Licence](https://smartcopying.edu.au/guidelines/education-licences/statutory-broadcast-licence/), see: [Use of Television Programs and Film by TAFE Institutes without a Statutory Broadcast Licence](https://smartcopying.edu.au/use-of-television-programs-and-film-by-tafe-institutes-without-a-statutory-broadcast-licence/)

***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](https://smartcopying.edu.au/glossary/podcast/), teachers must assess whether:

* the proposed use is for a specific instructional purpose and
* the use isn’t ‘unreasonable’.

For more information, see [Flexible Dealing](https://smartcopying.edu.au/flexible-dealing/).

***Fair dealing***

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

* criticism or review – eg including a short extract of material from a website in a [podcast](https://smartcopying.edu.au/glossary/podcast/) that reviews that website. The source material, the author and copyright owner (if different) must be identified.
* [parody](https://smartcopying.edu.au/glossary/parody/) or [satire](https://smartcopying.edu.au/glossary/satire/) – eg copying extracts of webpages to include in a [podcast](https://smartcopying.edu.au/glossary/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/).

***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](https://smartcopying.edu.au/glossary/podcast/) for students with a learning disability) and
* [Copying for Exams](https://smartcopying.edu.au/guidelines/library-exam-and-disability-copying/copying-for-exams/) (for using material in [podcasts](https://smartcopying.edu.au/glossary/podcast/) for exams).

***Material protected by a TPM***

If the source material is protected by an access control [technological protection measure](https://smartcopying.edu.au/guidelines/copyright-basics/technological-protection-measures-tpms/) (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/education-licences/the-statutory-text-and-artistic-works-licence/) or the [Statutory Broadcast Licence](https://smartcopying.edu.au/guidelines/education-licences/statutory-broadcast-licence/)
* the [flexible dealing](https://smartcopying.edu.au/flexible-dealing/) exception in s 200AB of the Copyright Act
* 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
* 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 [Technological Protection Measures (TPMs)](https://smartcopying.edu.au/guidelines/copyright-basics/technological-protection-measures-tpms/).

***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 TAFE or education use or
	+ able to be used ‘in your organisation’),
* where the material has been openly licensed (eg under [Creative Commons (CC)](https://smartcopying.edu.au/creative-commons-oer/)) or is in the public domain or
* where the teacher has received permission from the copyright owner to use it in the [podcast](https://smartcopying.edu.au/glossary/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](https://smartcopying.edu.au/glossary/podcast/) may include copyright material owned by the student, TAFE or relevant educational body, as well as copyright material that is owned by third parties.

If material in a [podcast](https://smartcopying.edu.au/glossary/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 TAFE wants to use that material, it must obtain the student’s permission.

If the [podcast](https://smartcopying.edu.au/glossary/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](https://smartcopying.edu.au/glossary/fair-dealing/) exception to include material in a [podcast](https://smartcopying.edu.au/glossary/podcast/). For student-created [podcasts](https://smartcopying.edu.au/glossary/podcast/), the most relevant [fair dealing](https://smartcopying.edu.au/glossary/fair-dealing/) exceptions are:

* research or study – eg students downloading material from the internet for inclusion in a [podcast](https://smartcopying.edu.au/glossary/podcast/) for their research or study.
* criticism or review – eg students including a short extract of material from a website in a [podcast](https://smartcopying.edu.au/glossary/podcast/) that reviews that website. The source material, the author and copyright owner (if different) must be identified.
* [parody](https://smartcopying.edu.au/glossary/parody/) or [satire](https://smartcopying.edu.au/glossary/satire/) – eg students [copying](https://smartcopying.edu.au/glossary/copy/) extracts of webpages to include in a [podcast](https://smartcopying.edu.au/glossary/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 licence](https://smartcopying.edu.au/where-to-find-cc-licensed-material/)) or
* 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](https://smartcopying.edu.au/glossary/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](https://www.smartcopying.edu.au/home) 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.

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**Appendix A**

**Sample Email to Request Permission to Use**

**Copyright Work in a TAFE Podcast**

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

Dear [name of copyright owner],

I am writing on behalf of the [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 [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.

Kind Regards,

[Name

Title]