**Remote and digital learning – school year 2021**

This information sheet provides updated copyright guidance to all schools for the 2021 school year to manage copyright liability risks due to digital uses.

***Why copyright rules are changing***

There were some special copyright licences negotiated for the 2020 school year in light of COVID-19 which, in combination with a flexible copyright exception that allows copyright materials to be used for educational purposes in “special cases” such as COVID-19, allowed schools to use copyright content in many remote learning scenarios. These special licences expire on 31 December 2020 and the ongoing ability to rely on the flexible copyright exception will depend on whether or not a State, school or student is in lockdown or isolation.

Unfortunately proposed [copyright changes](https://www.paulfletcher.com.au/media-releases/media-release-copyright-reforms-to-better-support-the-digital-environment) that would facilitate digital uses in schools going forward (the copyright access reforms) were not introduced into Parliament in 2020.

Australia’s copyright laws do not permit a range of digital uses of copyright material for the benefit of Australian students. As a result, schools should not assume that just because they were allowed to teach using copyright content with technologies such as Zoom during COVID-19 that these activities are generally permitted when schools have resumed face-to-face learning.

***The copyright rules that apply to you in 2021 will depend on whether you are still required to deliver remote learning due to COVID-19***

Although the majority of Australian schools have now resumed ‘face-to-face’ teaching and learning, all schools will be required to maintain their readiness to revert to remote learning models for some time to come. This could include scenarios such as:

* *Full remote learning*– for example, provision of full remote learning for all students (for example, by using services such as Zoom) to ensure compliance with public health orders or medical advice (such as COVID-19 orders imposed on schools)
* *Temporary remote learning*– for example, during a school closure for ‘deep cleaning’ following an incident of COVID-19 in the school community
* *Hybrid learning*, where although a school may be predominantly teaching ‘face-to-face’, remote education options are provided for students or teachers who may be self-isolating for medical reasons (for example while waiting for a COVID-19 test), or for students who are still overseas due to Australia’s border closures.

If your school needs to provide remote learning due to COVID-19, some special copyright rules will continue to apply to facilitate remote learning for students. However, as noted

above, some arrangements come to an end on 31 December 2020. These are set out in more detail below.

If your school is operating in its ordinary teaching environment, then ordinary copyright rules for digital uses apply.

The information sheet is set out in three parts:

* Part A – explaining the expiry of temporary copyright arrangements for the 2020 school year (including some steps schools must take due to the expiry of these temporary copying arrangements)
* Part B – explaining the copyright rules for the 2021 school year for schools operating under COVID-19 protocols
* Part C – explaining the copyright rules for general digital uses in the 2021 school year (until the passage of the copyright access reforms)
* Frequently Asked Questions.

**PART A – Expiry of licensing arrangements in place for the 2020 school year**

Many teachers made recordings of them reading books and teaching students during periods of remote learning in 2020. Generally speaking, there were two types of recordings made by teachers:

* virtual story times (where a teacher did no more than read aloud the storybook, eg reading a chapter of a book to students in their class). These recordings were made under a temporary story time agreement which expires on 31 December 2020.
* teaching activities (where teachers may have read some materials from a book, or even read out a whole story, but included commentary or observations or other teaching activities in the recording).

***Expiry of the School Storytime Agreement***

With the welcome support of the Australian Society of Authors and the Australian Publishers Association, the National Copyright Unit was able to negotiate a temporary licensing arrangement to allow teachers to read Australian stories to children during remote learning – “virtual story times”.

Although many of the activities covered by the Storytime Agreement would have been permitted by the “special case” exception in section 200AB of the Copyright Act, the Storytime Agreement also permitted uses of Australian stories that might not otherwise have been permitted by the exception, or might not have been permitted without a case by case analysis of each teacher’s intended use. For example:

* section 200AB permits uses of copyright content in special cases for the purposes of “educational instruction”. The Storytime Agreement allowed teachers to read stories to children as part of teaching activities, and also allowed teachers to read stories to provide additional connection with their classes during home learning periods, such as hosting a virtual story time for students and their families.
* where schools make content copied under section 200AB available to students online, they are generally required to do so via a secure (i.e. password protected) website or digital teaching environment. Although there may be some limited circumstances where section 200AB allows teachers to use copyright content with students via social media, this would require a case by case analysis to consider whether the specific use was permitted. The Storytime Agreement provided certainty during COVID-19 that schools could use social media platforms such as Facebook Live or YouTube to hold virtual story times, even if they did not have access to a password protected digital teaching environment.

The Storytime Agreement only applied while schools were required to provide remote learning for students due to the COVID-19 emergency. The agreement states that:

**“Recordings can only be used during the period of the outbreak and must be taken down and deleted within 7 days of the conclusion of term 4, 2020 for each school which has taken part in this Storytime arrangement.”**

If your school relied on the Storytime Agreement, you must ensure that all recordings of Australian stories made under the Agreement are deleted within this time frame. This includes ensuring that any recordings posted on social media (for example a school Facebook or YouTube page) as well as password protected platforms (eg Google Classroom or your school LMS) are removed.

Please contact the [National Copyright Unit (NCU)](https://smartcopying.edu.au/contact-us/) for advice if your school still needs to use copies or recordings made under this agreement in the 2021 school year – telephone: 02 7814 3855 or email: smartcopying@det.nsw.edu.au.

***Archiving of content copied during COVID-19 home learning***

Many schools relied on existing provisions of the Copyright Act to make digital copies of educational materials, teaching resources and other content for students during periods of remote learning due to COVID-19. For example, if your recording contains annotations, commentary or other teaching content eg a teacher asking questions to students about the book, it will be considered to be a teaching recording, which was made under existing educational provisions in the Copyright Act during COVID-19.

Schools do not have a general right to digitise all forms of copyright content for student use, and many resources made under these provisions must now be archived. There is no deletion requirement for these resources, however you should disable access to them (ie

archive them) when they are not required for the educational purpose (eg if your school has resumed normal teaching).

Any further use of content made copied during the COVID-19 period would need to be assessed on a case by case basis.  If your school still has a need to provide remote learning due to COVID-19, you may be able continue to use these resources.

Please [contact NCU](https://smartcopying.edu.au/contact-us/) for advice if your school would like to use content copied or communicated under COVID-19 arrangements for other educational purposes – telephone: 02 7814 3855 or email: smartcopying@det.nsw.edu.au.

**PART B – The copyright rules for the 2021 school year for schools under COVID-19 protocols**

The COVID-19 guidelines established by the National Copyright Unit in March 2020 advised schools on what would be permitted during remote learning for COVID-19. The guidelines will still generally apply if your school is needing to operate under COVID-19 protocols, subject to the end of the arrangements in Part A.

Please see the information sheet “**Remote & Online Learning During the COVID-19 Outbreak**” available at <https://smartcopying.edu.au/remote-online-learning-during-the-covid-19-outbreak/>.

The information sheet sets out some general questions and general principles to assist you in preparing remote lessons for students. If you have specific questions about using copyright materials to provide remote learning due to COVID-19, please [contact the National Copyright Unit](https://smartcopying.edu.au/contact-us/) – telephone: 02 7814 3855 or email: smartcopying@det.nsw.edu.au.

Please note that if you want to read Australian stories to children, the broader permissions discussed above regarding the Storytime Agreement expired at the end of term four 2020. Teachers should only read stories virtually to students when required as part of their educational instruction. Any recordings should be made available to students via secure servers (such as your school’s digital teaching environment).

**PART C – The copying rules for general digital uses in 2021**

Australia’s copyright system is very complicated, with different rules applying to different forms of content in many cases. The Smartcopying website (www.smartcopying.edu.au) provides over [40 separate information sheets](https://smartcopying.edu.au/schools/) providing detailed information about using copyright content in Australian schools.

Setting out the detailed rules about all digital copyright uses is outside the scope of this information sheet. This information sheet focuses on digital uses that schools across

Australia have commonly adopted during the transition to remote learning, and suggests which uses are not permitted, or are legally uncertain for general digital uses in the 2021 school year.

In many cases, there is no clear or ‘one size fits all’ answer to whether digital uses of copyright content are permitted. This information sheet provides general information only, and should not be considered to be legal advice regarding your specific questions. Please contact the NCU if you have specific questions about general digital uses that are not included in the following information.

***Using online video conferencing technologies***

Many teachers – and the wider community – have embraced the flexibility and opportunities provided by digital platforms such as Zoom, Google Meet, Microsoft Teams and similar services. This has enabled lessons, parent – teacher conferences and other school events to proceed even during the challenges posed by teachers and students learning and teaching from home.

However, the Copyright Act is not well adapted for the ongoing use of these digital technologies. Many teaching activities using copyright materials that would be lawful when students and teachers are in the classroom, may not be lawful while using technologies such as Zoom.

The following table shows how many common uses of online video conferencing such as Zoom [1] are not clearly permitted by the Copyright Act if a teacher is using copyright content in the lesson:

|  |  |
| --- | --- |
| **Activity** | **Permitted?** |
| Teacher speaking directly to students via online video conferencing (eg Zoom) | Yes – as long as no copyright content is involved in the lesson. |
| Teacher is in a classroom reading copyright content directly to students via online video conferencing such as Zoom eg reading a document out loud | Yes, under section 28 of the Copyright Act, if the online video conferencing is limited to students enrolled in the class and the content is being used in the course of giving educational instruction.  |
| Teacher is in a classroom displaying copyright content to students via online video conferencing (eg Zoom) | Unclear, and the answer may be different depending on the type of content being displayed, and how it is displayed. Please contact NCU for advice. |
| Teacher is in a classroom showing a film or playing music to students directly via online video conferencing (eg Zoom) | Unclear. Please contact NCU for advice. |
| Teacher is at home reading copyright content directly to students who are at school/home | Unclear. Please contact NCU for advice. |
| Teacher is live streaming a classroom lesson where content is being shown on an interactive whiteboard or other screen | Unclear. Please contact NCU for advice. |
| Teacher is recording a classroom lesson where content is being shown on an interactive whiteboard or other screen | Unclear. Please contact NCU for advice. |
| Teacher is teaching via online video conferencing (eg Zoom) and screen sharing or presenting content via online video conferencing | Unclear. Please contact NCU for advice. |
| Teacher recording a lesson at home to use later with students where content is being shown | No:–          section 28 requires the lesson to be in the presence of an audience.–          section 28 doesn’t permit recording of lessons. |
| Parents are listening to a lesson via online video conferencing (eg Zoom), or helping students with activities via online video conferencing (eg Zoom) where content is being shown | No – section 28 does not apply if parents and guardians are part of the lesson. |
| Students are listening to a lesson involving copyright content via online video conferencing (eg Zoom) from a workplace or community premises where people other than the student are watching the lesson | No – section 28 does not apply if members of the community are part of the lesson. |

**Frequently asked questions**

**Can I hold ‘virtual story times’ by reading books to students online?**

Yes, as long as:

* you live stream the story time, not record it
* the teacher is physically present on school premises at the time of the live stream
* the story time is held for educational instruction (for example, as part of a lesson)
* the audience is limited to staff and students of the school.

If you wish to record the reading, and make it available to students, please [contact the NCU](https://smartcopying.edu.au/contact-us/) for advice.

**Can I use social media platforms (such as Facebook or YouTube) to teach students?**

There is no general permission for schools to post copyright content on social media platforms such as Facebook or YouTube. Although there are some exceptions to this rule, in general copyright materials used for educational purposes should only be shared with staff and students of the school (via password protected access).

If you wish to use technologies such as Facebook Live or YouTube Live instead of services such as Zoom or Skype, then the answers provided for Zoom in this information sheet will apply to these types of uses (provided you have limited the audience in the ways discussed, ie to just teachers and students of the school).

For wider social media uses (eg posting content to a school Facebook page, class Facebook Group or YouTube channel), this may be possible in very limited circumstances where there is a special educational need, and the content is removed at the end of the lesson. However, for the most part, you will not be permitted to post copyright works to publicly accessible websites. Further information is provided in this Smartcopying information sheet on [YouTube – Using](https://smartcopying.edu.au/using-youtube/).

Schools should contact the National Copyright Unit for advice before posting material publicly on social media.

**Can I record and post lessons on the school’s website?**

There is no general permission for schools to post copyright content on a public website. Although there are some exceptions to this rule, in general you should only make copyright content available only be shared with staff and students of the school (via password protected access). If your website facilitates this kind of secure access, then this may be possible (see the answer to the question below regarding posting lessons to a digital teaching environment).

Posting content to the school’s public website may be possible in very limited circumstances where there is a special educational need, and the content is removed at the end of the specific need.  However, for the most part, you will not be permitted to post copyright works to publicly accessible websites.

Schools should [contact the National Copyright Unit](https://smartcopying.edu.au/contact-us/) for advice before posting material publicly on a school website.

**Can I record and post lessons on the school digital teaching environment (DTE)?**

The answer to this question will depend on the type of copyright content being recorded/copied.

For text and artistic works, which are covered by a statutory licence with the Copyright Agency, this may be possible if posted to a password protected digital teaching environment

(DTE). Licence fees would be payable for this use. In addition, schools are only permitted to use an amount of content that would not cause unreasonable prejudice to the copyright owner.

For further information on copying and communicating text and artistic works to a DTE, see this information sheet <https://smartcopying.edu.au/guidelines/education-licences/the-statutory-text-and-artistic-works-licence/>.

Schools are permitted to copy and communicate broadcasts (for example, a recorded copy of Behind The News) to a password protected DTE under a statutory licence administered by Screenrights.  Licence fees are payable for this use. Broadcasts can also be played to students as part of their lesson under section 28 of the Copyright Act. Recording a copy of a lesson where the teacher is playing broadcast content may be possible in certain circumstances. Please contact the NCU for advice.

For other forms of content (including apps, games, computer software or films), there is no general right to record a lesson and upload it to a DTE. This may be possible, but would need to be determined on a case by case basis. Please [contact the NCU](https://smartcopying.edu.au/contact-us/) for advice.

**Do I need to delete virtual story time recordings that were not made under the Storytime Agreement (eg that were made under the educational use provisions during COVID-19)?**

No. There is no deletion requirement under the educational use provisions. However, you must disable access to and archive the recordings when they are not required for the educational purpose (eg if your school is back to normal learning).

**Can I use archived teaching recordings made during COVID-19 as learning resources in 2021?**

It depends. Teachers may be able to use these recordings in 2021 under other educational use provisions in the Copyright Act. This would need to be assessed on a case by case basis.

If a teacher wishes to use a specific recording(s) and is unsure, they should [contact the NCU](https://smartcopying.edu.au/contact-us/) and we can assess their particular case.

**What if I have other questions about digital uses?**

You can [contact the National Copyright Unit](https://smartcopying.edu.au/contact-us/) directly for any copyright queries related to your school on telephone: 02 7814 3855 or email: smartcopying@det.nsw.edu.au.

The NCU also runs copyright training for teachers. You can sign up at <https://smartcopying.edu.au/national-copyright-seminar-series/>

[1] The same answers would apply to most forms of similar online conferencing technologies such as Google Meet, Microsoft Teams, WebEx or Skype.