**Use of Television Programs and Film by TAFE Institutes without a Statutory Broadcast Licence**

12 January 2022

This information sheet explains the use of television programs and film by TAFE institutes without a [Statutory Broadcast Licence](https://smartcopying.edu.au/glossary/statutory-broadcast-licence/) (ie Screenrights Licence).

The majority of TAFE institutes no longer have a [Statutory Broadcast Licence](https://smartcopying.edu.au/glossary/statutory-broadcast-licence/) after 31 December 2015.  This means that TAFE institutes without a [Statutory Broadcast Licence](https://smartcopying.edu.au/glossary/statutory-broadcast-licence/) cannot [copy](https://smartcopying.edu.au/glossary/copy/) television or radio [broadcasts](https://smartcopying.edu.au/glossary/broadcast/) or [communicate](https://smartcopying.edu.au/glossary/communicate/) copy broadcasts. A copy broadcast is a copy of a television or radio [broadcast](https://smartcopying.edu.au/glossary/broadcast/) made by a:

* teacher at home, or
* TAFE institute, or
* [resource centre](https://smartcopying.edu.au/glossary/resource-centre/),

for educational use.

TAFE institutes are still able to:

* play live [broadcasts](https://smartcopying.edu.au/glossary/broadcast/)
* play or [communicate](https://smartcopying.edu.au/glossary/communicate/) purchased content (eg television programs, series, films, documentary programs)
* play online television programs (eg from ABC iView, SBS On Demand or other catch up television services)
* in limited circumstances, [copy](https://smartcopying.edu.au/glossary/copy/) short extracts of films, videos, DVDs, online content etc.

Please contact the [NCU](https://smartcopying.edu.au/contact-us/) or your [local CAG representative](https://smartcopying.edu.au/contact-us/) if you are unsure if your TAFE institute is one of the ones that have opted out of the licence.

If your TAFE institute is one of the institutes that have opted in, please go to [Statutory Broadcast Licence](https://smartcopying.edu.au/guidelines/education-licences/statutory-broadcast-licence/) for further information.

**My TAFE institute does not have a Statutory Broadcast Licence, what am I allowed to do?**

You are permitted to play:

* live television and radio [broadcasts](https://smartcopying.edu.au/glossary/broadcast/)
* purchased television programs (eg from iView)
* YouTube videos, DVDs and VHS, as well as digital videos (eg MP4)
* copy broadcasts copied under your institute’s previous [Statutory Broadcast Licence](https://smartcopying.edu.au/glossary/statutory-broadcast-licence/) (see below)
* content from embedded links

to your classes for [educational purposes](https://smartcopying.edu.au/glossary/educational-purpose/).

You can also [copy](https://smartcopying.edu.au/glossary/copy/) short extracts from films, online videos for [educational instruction](https://smartcopying.edu.au/glossary/educational-instruction/). For additional information on copying short extracts, see [Flexible Dealing](https://smartcopying.edu.au/flexible-dealing/).

You are not permitted to:

* record television or radio programs from television or radio [broadcasts](https://smartcopying.edu.au/glossary/broadcast/) (this includes copying by Fetch TV or similar products)
* make further [copies](https://smartcopying.edu.au/glossary/copy/) of television programs copied under the previous [Statutory Broadcast Licence](https://smartcopying.edu.au/glossary/statutory-broadcast-licence/) after 1 January 2016
* obtain copies of television or radio [broadcasts](https://smartcopying.edu.au/glossary/broadcast/) from [resource centres](https://smartcopying.edu.au/glossary/resource-centre/) such as Enhance TV, Informit or ClickView
* upload and/or [make available](https://smartcopying.edu.au/glossary/glossary/communicate) copy broadcasts to intranets (including password protected intranets), content or learning management systems
* keep copies of copy television or radio broadcasts made under the [Statutory Broadcast Licence](https://smartcopying.edu.au/glossary/statutory-broadcast-licence/) on a TAFE institute’s content management system, learning management system or intranet (including password protected intranet) after 1 January 2016.

**What can I do with the copies of broadcasts that were made under the Stautory Broadcast Licence before my TAFE opted out?**

These programs can then be played and [communicated](https://smartcopying.edu.au/glossary/communicate/) under section 28 of the Copyright Act where it is done in class, or otherwise in the presence of an audience, in the course of [educational instruction](https://smartcopying.edu.au/glossary/educational-instruction/) given by a teacher and all the people in the audience are giving or receiving instruction, or are directly connected with the place where instruction is given.

For additional information on section 28, see [Performance and Communication of Copyright Material in TAFE Classes](https://smartcopying.edu.au/performance-and-communication-of-copyright-material-in-tafe-classes/).

**What if I need a TV Program for educational purposes?**

There are numerous ways to obtain TV programs for [educational purposes](https://smartcopying.edu.au/glossary/educational-purpose/).

In most cases, the most common options will be [streaming](https://smartcopying.edu.au/glossary/streaming/) (for content needed within a few weeks of airing) or purchasing direct (for copies needed at a later date and no longer available online).  See below for the top five ways and [contact the NCU](https://smartcopying.edu.au/contact-us/) if you need further assistance.

**1.   Playing from broadcaster websites eg ABC iView, SBS on Demand**

Playing from broadcaster websites does not involve making a copy and is an activity which can be freely done under section 28 of the Copyright Act in the circumstances set out above

and explained further in: [Performance and Communication of Copyright Material in TAFE Classes](https://smartcopying.edu.au/performance-and-communication-of-copyright-material-in-tafe-classes/).

The majority of programs broadcast on channels such as ABC, SBS and major commercial channels are available to be played online. Broadcasts can therefore be freely played or made available online in classrooms direct from broadcaster websites.

Some broadcasters also have their own YouTube channels (eg ABC) where they upload a number of TV programs that can then be streamed.

**2.   Linking to online programs on broadcaster websites**

Linking, which includes embedding, does not involve making a copy and is therefore not a copyright activity. Links can be provided for online programs and is a smart and legitimate way to access and view content.

**3.   Direct purchasing from broadcasters eg ABC Shop, SBS Shop**

Many TV programs can be purchased direct from the broadcaster especially when the program is no longer available online and will need to be played to students in the future as a teaching resource. A copy that has been purchased can be played or [communicated](https://smartcopying.edu.au/glossary/communicate/) in class in the course of giving [educational instruction](https://smartcopying.edu.au/glossary/educational-instruction/) under section 28 of the Copyright Act. A digital copy can also be made available online to be played in class in the course of giving [educational instruction](https://smartcopying.edu.au/glossary/educational-instruction/).

**4.   Purchase from Online Video Stores e.g. iTunes, Google Play, Amazon Instant Video**

TV programs can also be purchased from online video stores and while most commercial content will be available from the major stores, there are other stockists that will provide more niche content eg international content. Just as with TV programs purchased direct from the broadcaster, the copy purchased can be played or [communicated](https://smartcopying.edu.au/glossary/communicate/) in class in the course of giving [educational instruction](https://smartcopying.edu.au/glossary/educational-instruction/) under section 28 of the Copyright Act.

**5.   Obtain permission to use short extracts**

When only a short extract from a broadcast is needed for a teaching resource, permission can be sought to allow for its use in a teaching resource. Due to the non-commercial nature of the proposed use, permission is more likely to be granted. Permission templates can be developed to save time and hasten the process of seeking permission.

This option is likely to be of use in narrow circumstances due to the time that it can take to receive permission. Where content is needed immediately it is better to link to or purchase content.

**Other sources of audio-visual content**

The [Statutory Broadcast Licence](https://smartcopying.edu.au/glossary/statutory-broadcast-licence/) only covers TV/radio [broadcasts](https://smartcopying.edu.au/glossary/broadcast/) and so does not deal with other audio-visual content such as commercial DVDs and films and any other videos that have not been copied from a TV broadcast.

In addition to the above sources of copy broadcasts there are also other sources of audio-visual content which may also be of value for institutes looking for similar content to that which is broadcast on TV or other audio-visual content.

**1.   Similar Content on YouTube**

It is possible to search platforms such as YouTube for similar content to TV broadcasts which present the same message as the broadcast content and which can be played or linked to. Some broadcasters also have their own YouTube channels (eg ABC) where they upload a number of TV programs that can then be played.

To access and share this content you can:

* provide links of YouTube videos to your students via email
* bookmark links to YouTube videos to play/[communicate](https://smartcopying.edu.au/glossary/communicate/) later on content and learning management systems
* [stream](https://smartcopying.edu.au/glossary/streaming/) or play YouTube videos
* embed YouTube videos into your teaching resources (where that functionality is available for those videos).

You may be able to rely on section 200AB of the Copyright Act ([flexible dealing](https://smartcopying.edu.au/flexible-dealing/)) to [copy](https://smartcopying.edu.au/glossary/copy/) and [communicate](https://smartcopying.edu.au/glossary/communicate/) a video on YouTube.  For further information, see [Youtube – Using](https://smartcopying.edu.au/using-youtube/).

**2.   Videos from other online providers**

There are other sources of educational videos which can be used for certain courses. Trade courses tend to require specialised teaching resources which are available from specific trade organisations.

**3.   [Kanopy](https://www.kanopystreaming.com/)**

[Kanopy](https://www.kanopystreaming.com/) is an educational video distributor with a film collection of over 50,000 titles whereby institutes pay only for what they use. All content obtained in this way can be used without the need for a licence.

**4.   ClickView Filtered Subscription/VEA**

ClickView offers licensed content previously offered by VEA and have direct licensing arrangements with leading content providers including National Geographic, BBC and Disney. ClickView offers its directly licensed library of videos on a subscription basis which may be suited to institutes that are likely to use a large number of its videos. This library is distinct from ClickView’s complete package which includes a 24/7 Cloud and Exchange service which allows for easy copying of TV broadcasts but is only available with the licence.

**5.   Commercial DVDs**

Any commercial DVD (that is, DVDs which have been purchased or hired) can be played in classrooms even if its content has been broadcast on TV. The playing and [communication](https://smartcopying.edu.au/glossary/communicate/) of copyright [works](https://smartcopying.edu.au/glossary/works/) in the classroom for [educational instruction](https://smartcopying.edu.au/glossary/educational-instruction/) is allowed under section 28 of the Copyright Act. For further information, see [Performance and Communication of Copyright Material in TAFE Classes](https://smartcopying.edu.au/performance-and-communication-of-copyright-material-in-tafe-classes/).

**Uploading copies of films to communicate in class**

[Communication](https://smartcopying.edu.au/glossary/communicate/) means making a film available online such as uploading to an intranet or learning management system. Teachers may upload online films or make a digital copy of a VHS/DVD to upload onto password protected content repositories under section the [flexible dealing](https://smartcopying.edu.au/flexible-dealing/) exception in 200AB of the Copyright Act, provided the film can only be viewed by teachers who are directly giving, and students who are directly receiving, the instruction for which the copy has been made ie one course as opposed to the students enrolled in the entire institute.

For section 200AB to apply, the following requirements must be met:

**1.   The original is a lawful copy**

Think about who uploaded the film and whether they have permission to make it available online.  Avoid [copying](https://smartcopying.edu.au/glossary/copy/) films off peer-to-peer websites, as these films are more likely to be pirated copies. It is best to use films purchased by the institute/staff or a genuine, non-pirated copy given to the institute/staff.

**2.   The film is needed for**[**educational instruction**](https://smartcopying.edu.au/glossary/educational-instruction/)**and is not used for profit**

Educational instruction includes using the material to prepare for class (including virtual classes), to use in a classroom exercise, for compiling resources for homework, research or assessment tasks or any other teaching activity.

There must be a particular [educational instruction](https://smartcopying.edu.au/glossary/educational-instruction/) purpose in mind when making the copy rather than copying “just in case” it might be needed in the future.

Also, the use must not be for the purpose of the school obtaining a profit or a commercial advantage.

**3.   The use does not prejudice the copyright owner**

Prejudice to the copyright owner is likely to arise where:

* you can purchase the film in digital format within a reasonable time.
	+ If you can purchase the material in the form you require or obtain a licence for your proposed use on reasonable terms, then you must do so. This can be determined by searching your usual sources for digital content such as the ABC shop, iTunes, Google, Amazon.
* more than what is needed of the film for [educational instruction](https://smartcopying.edu.au/glossary/educational-instruction/) is [copied](https://smartcopying.edu.au/glossary/copy/).
	+ In most cases, teachers should only be using short extracts of a film for [educational instruction](https://smartcopying.edu.au/glossary/educational-instruction/).
	+ Copying an entire film for [educational instruction](https://smartcopying.edu.au/glossary/educational-instruction/) is unlikely to be permitted under section 200AB. Only copy what is needed. For further advice please [contact the NCU](https://smartcopying.edu.au/contact-us/).
* the film is not removed from the digital repository as soon as practicable once it is no longer required for class or homework exercises.
* the quality of the film is interfered with.
* the film is placed on a content repository that is open to the public.
	+ Placing the film on a password protected content repository with access restricted to teachers and students of one class only is OK.

**4.   The use does not circumvent access control technological protection measures (‘ATPMs’)**

Most commercial DVDs, (eg ‘The Castle’) are protected by ATPMs which are technologies which prevent a user from easily accessing and copying the content on a DVD. The most common ATPM technology is a type of software system called CSS (Content Scrambling System). CSS operates like a ‘lock and key’ code on DVD.  In order for a viewer to watch the DVD, the DVD player must be equipped with the corresponding ‘software key’ to unlock the content and allow it to be viewed.

It is illegal to circumvent an ATPM under the Copyright Act. Making a digital copy of a commercial DVD is likely to involve circumventing the ATPM and therefore is illegal.

**Terms of use**

The Copyright Act permits copies to be made under the [flexible dealing](https://smartcopying.edu.au/flexible-dealing/) exception (s 200AB) when you can meet the above requirements, but a lot of commercially purchased content will have terms of use that limit use to ‘personal, non-commercial’ uses. This may not allow [copying](https://smartcopying.edu.au/glossary/copy/) by teachers and TAFE institutes for ‘educational purposes’.

This is a grey area, but the NCU believes that it is unlikely the terms of use would override section 200AB and as such there is a low risk of breaching the conditions of use. Contact the [NCU](https://smartcopying.edu.au/contact-us/) for further advice.

**Labelling**

If you make a copy of a film in reliance on the [flexible dealing](https://smartcopying.edu.au/flexible-dealing/) exception, it is good practice to label copies with the name of the film, URL address of its location and the date it was copied. For example:

Copied under s 200AB of the Copyright Act 1968

‘Body Parts’, [www.anatomyguide.com.au](http://www.anatomyguide.com.au/), 15 September 2020

Films [copied](https://smartcopying.edu.au/glossary/copy/) under section 200AB should be removed from the digital repository or archived as soon as practicable once they are no longer required for the [educational instruction](https://smartcopying.edu.au/glossary/educational-instruction/) purpose for which they were [copied](https://smartcopying.edu.au/glossary/copy/). It should not be used to create an online library and should therefore be closed to general use unless requested for a particular class.

For more information on labelling, see [Labelling and Attributing](https://smartcopying.edu.au/labelling-and-attributing/).

For further information on section 200AB, see [Flexible Dealing](https://smartcopying.edu.au/flexible-dealing/).

**Frequently Asked Questions**

**Q1.   Do I need a Statutory Broadcast Licence to use services such as Edu TV, ClickView 24/7 and Exchange and Enhance TV which allow me to make and obtain copies of TV/radio broadcasts?**

A1.    Yes, any service which allows you to make copies of TV/radio [broadcasts](https://smartcopying.edu.au/glossary/broadcast/) will require a [Statutory Broadcast Licence](https://smartcopying.edu.au/glossary/statutory-broadcast-licence/).

**Q2.   Can I use content from iTunes?**

A2.    Yes. iTunes and iTunesU contain a variety of free content. This includes music, TV shows, films, [podcasts](https://smartcopying.edu.au/glossary/podcast/) and applications. This content can be streamed direct from the iTunes store or downloaded into your iTunes player without payment and used for [educational purposes](https://smartcopying.edu.au/glossary/educational-purpose/).

**Q3.   Can I format shift a DVD copy of a TV program purchased from a commercial supplier to a digital format?**

A3.    If the TV program is available in a digital format, then you will need to purchase the digital format. That digital format can then be played and [communicated](https://smartcopying.edu.au/glossary/communicate/) to a classroom for [educational purposes](https://smartcopying.edu.au/glossary/educational-purpose/).

If the TV program isn’t available in digital format, then you may be able to format shift the program under section 200AB of the Copyright Act. You must be able to meet the criteria for section 200AB listed in the above section ‘Uploading Copies of Films to Communicate in Class’.

**Q4.   Can I format shift a VHS to a digital copy?**

A4.    Yes, you are allowed to do this under section 200AB if you can meet all the requirements. For the requirements and further information, see the above section ‘Uploading Copies of Films to Communicate in Class’.

**Q5.   Can I upload a digital copy of a TV program purchased from a commercial supplier to a LMS?**

A5.    This may be done under section 200AB of the Copyright Act if you are able to meet all the criteria listed above in ‘Uploading Copies of Films to Communicate in Class’. Once the TV program is no longer required for the class it should be taken down (eg stored in a personal folder, on a USB, external hard drive, etc) until needed for another class.

**Q6.   If I have purchased a digital copy of a TV program, can I upload it online to show in class even if a temporary copy is made when uploading?**

A6.   Yes, you are allowed to make the copy available online and show it in class to students for [educational instruction](https://smartcopying.edu.au/glossary/educational-instruction/). Even if a temporary copy is made this is allowed under section 43A of the Copyright Act if in the course of making it available online.

**Q7.   Can I format shift a DVD copy of a TV program which was made when my institute had the Statutory Broadcast Licence so that I can upload it to show online to my class?**

A7.    No, not after 31 December 2015.

However, you can continue to play the TV program direct from the DVD to the class.

**Q8.   If my institute does not have a Statutory Broadcast Licence, does that mean we cannot show any videos in class?**

A8.    No, the [Statutory Broadcast Licence](https://smartcopying.edu.au/glossary/statutory-broadcast-licence/) only relates to the [copying](https://smartcopying.edu.au/glossary/copy/) of TV/radio [broadcasts](https://smartcopying.edu.au/glossary/broadcast/). Your institute can continue to show purchased copies of TV programs, [stream](https://smartcopying.edu.au/glossary/streaming/) TV programs and online videos and show other videos such as films. [Broadcasts](https://smartcopying.edu.au/glossary/broadcast/) [copied](https://smartcopying.edu.au/glossary/copy/) under your institute’s previous [Statutory Broadcast Licence](https://smartcopying.edu.au/glossary/statutory-broadcast-licence/) can also be played in the circumstances outlined above.

**Q9.   Can I make a digital copy of a broadcast previously copied under our Statutory Broadcast Licence available on a LMS for students to access outside of class?**

A9.    No. You cannot do this if you do not have a [Statutory Broadcast Licence](https://smartcopying.edu.au/glossary/statutory-broadcast-licence/). You can play digital copies of [broadcasts](https://smartcopying.edu.au/glossary/broadcast/) that you previously [copied](https://smartcopying.edu.au/glossary/copy/), but you cannot make these copies available on your LMS, CMS or intranet (including password protected intranet) for students to access outside of class after 31 December 2015.

**Q10.   Can I format shift our collection of DVDs to create a digital library?**

A10.    Creating a digital library of films ‘just in case’ the films may be needed for future exercises is not permitted. To rely on section 200AB and format shift DVDs you must meet a number of requirements.  These requirements are listed above under ‘Uploading Copies of Films to Communicate in Class’ or for additional information on format shifting, see [Flexible Dealing Exception](https://smartcopying.edu.au/flexible-dealing/).

**Q11.  I want to show my students a TV program which I saw on SBS a few days ago as it ties in with something I am teaching them, am I allowed to do this?**

A11.    Yes, if the program is available on SBS on Demand it can be played direct in class or you can provide your students a link to the webpage. If the program is no longer available on SBS on Demand, it might be available for purchase from the SBS shop or another commercial supplier. Contact your library who will be able to order a copy. The copy of the program can be played in class under section 28 of the Copyright Act.

**Q12.  Can I borrow a copy of a TV program made by an institute which has the Statutory Broadcast Licence if my institute does not have the licence?**

A12.    No, the institute with the [Statutory Broadcast Licence](https://smartcopying.edu.au/glossary/statutory-broadcast-licence/) cannot lend copies of TV programs that it makes to institutes which do not have a [Statutory Broadcast Licence](https://smartcopying.edu.au/glossary/statutory-broadcast-licence/). Please contact your library to obtain the TV program.

**Q13.  Can I play a copy of a TV program made under the Statutory Broadcast Licence after expiry of the licence from 1 January 2016?**

A13.    Yes, you can play copy television programs that were [copied](https://smartcopying.edu.au/glossary/copy/) under the [Statutory Broadcast Licence](https://smartcopying.edu.au/glossary/statutory-broadcast-licence/) prior to 31 December 2015 to your class under section 28.

If you want to play a copy television program to your class using a learning management system, you must play it directly from a storage device (eg USB, external hard drive or personal folder) where it was saved before the expiry of the licence on 31 December 2015, you cannot [copy](https://smartcopying.edu.au/glossary/copy/) the program to a different storage device in order to play it.

Where you want to play the digital copy from a DVD, external hard drive, USB or personal folder to a class, it must be:

* in the course of education and not for profit and
* the people in the audience or class are giving or receiving instruction, or are directly connected with the place where instruction is given.

For additional information on section 28, see [Performance and Communication of Copyright Material in TAFE Classes](https://smartcopying.edu.au/performance-and-communication-of-copyright-material-in-tafe-classes/).

**Q14.  Can we lend DVD copies of television broadcasts under the previous Statutory Broadcast Licence to students? If so, can the copy DVD be available in the general library for student loan?**

A14.    Yes, you are permitted to loan Students the DVD copies of television broadcasts, provided the following notice is added to the cover of DVD:

This DVD is provided for the student’s own personal use. Making copies of the DVD is strictly prohibited and in breach of the Copyright Act 1968 (Cth) and strict penalties may apply.

The DVD copies can be made available from the general library. You are not required to keep the DVD copies of television broadcasts behind closed reserve. We note that some TAFE libraries prefer to keep such copies behind closed reserve and only allow students to access and view the DVDs in the library.

As a practical consideration, if the DVD is lost or damaged, you will have to purchase another copy so consider whether the institute wants to continue to allow students to take copies home.