**Issue 5 - August 2019 - THE LATEST NEWS IN COPYRIGHT FOR AUSTRALIAN SCHOOLS AND TAFE**

The National Copyright Unit (NCU) is a specialised unit that provides copyright assistance and advice to all Australian government and non-government schools as well as TAFEs in Australia.

NCU is a small secretariat that acts on behalf of the Copyright Advisory Group (CAG) which reports to the COAG Education Council. CAG’s committee members are senior representatives from State and Territory Departments of Education and the Catholic and Independent school sectors.  The NCU was established in 2005 to:

* provide specialist copyright assistance to schools and TAFEs;
* negotiate and administer the School and TAFE sectors licences with Australian Collecting Societies and related copyright surveys; and
* advocate for copyright law reform benefitting education.

For practical copyright advice, information on our national seminar series and Copyright for Educators (C4E) course please contact our team and/or see our [Smartcopying Website](http://www.smartcopying.edu.au/).

**Using YouTube**

One of the most commonly asked questions that the NCU receives from teachers is - can I use YouTube in my classroom?

The answer is **yes**. There are three main ways that teachers use YouTube videos in the classroom:

1. Steaming in class;
2. Linking to or embedding;
3. Downloading.

We’ll go through each of these in more detail below.

1. **Streaming YouTube videos in the classroom**

You may be able to stream YouTube videos in the classroom under section 28 of the Copyright Act.

This [streaming](http://www.smartcopying.edu.au/glossary/glossary/webcast-or-streaming) may be directly from the YouTube website, or from a link or an embedded video on another website or in a resource (more on this below in #2!).

Section 28 allows teachers and students to play YouTube videos in class where it is:

* 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.

Risk management tips when streaming YouTube in the classroom:

* don't use content that is likely to be infringing;
* only use YouTube videos for educational purposes - there should be no commercial benefit;
* don't expose the content to further copying or communication, such as giving students access to an electronic file that they could copy.

For further information, see the Smartcopying website at:

* <https://www.smartcopying.edu.au/information-sheets/schools/performance-and-communication-of-works-and-audio-visual-material-in-class---what-am-i-allowed-to-do>
* <http://www.smartcopying.edu.au/information-sheets/schools/using-youtube>
* <https://www.smartcopying.edu.au/information-sheets/schools/copyright-in-the-digital-teaching-environment-a-manual-for-schools/films-and-videos>
1. **Linking to or embedding YouTube videos**

It is best practice for teachers to provide links to or embed YouTube videos where possible.

Linking is not a copyright activity under the Copyright Act because you are not actually ‘copying’ a YouTube video; rather, you are providing a path to its location. Providing links to YouTube videos is a great way of managing copyright as well as ensuring the YouTube video you are using is up to date.

Embedding is also not a copyright activity. Embedding a link allows teachers/students to view and access the YouTube video in its original location without having to leave the website or teaching resource. For example, you can embed YouTube videos into teaching resources e.g. a PowerPoint or onto a website for teachers/students to access.

The YouTube website provides information on how to embed YouTube videos. Note however, that sometimes the uploader of the YouTube video may have disabled the embed functionality. In these situations, we recommend you instead link to the YouTube video.

For further information, see the Smartcopying website at:

* <http://www.smartcopying.edu.au/information-sheets/schools/using-youtube>
* <https://www.smartcopying.edu.au/information-sheets/schools/copyright-in-the-digital-teaching-environment-a-manual-for-schools/films-and-videos>
1. **Downloading YouTube videos**

Downloading a YouTube video involves making a copy of it.  The Flexible Dealing exception in section 200AB of the Copyright Act may permit a copy to be made, however the terms of use on the YouTube website state that the videos are not to be downloaded (i.e. copied).

It is unclear whether the YouTube terms of use would prevent a school from relying on the Flexible Dealing exception. There is a small risk that a school might be in breach of contract if it copies videos from YouTube.  However, NCU thinks that the better position is that the school would not infringe copyright if the Flexible Dealing exception as set out in the Copyright Act applies.

For the Flexible Dealing exception in section 200AB to apply:

* No other statutory licence or exception must apply - most content on YouTube has not previously been broadcast. However, if you are copying material from a Free to Air broadcaster’s YouTube channel (eg ABC, SBS) that was previously broadcast (eg a news story shown on the nightly news) this will be covered by the [Statutory Broadcast Licence](http://www.smartcopying.edu.au/copyright-guidelines/education-licences-%28statutory-and-voluntary-licences%29/education-licence-a-statutory-broadcast-licence).
* The YouTube video must not be a copy of content that is likely to be infringing. Content is unlikely to be infringing if it is on a YouTube Partner Channel – YouTube has many content partners that provide videos, including National Geographic, BBC Worldwide and Showtime.
* You must be using the video for [educational instruction](http://www.smartcopying.edu.au/glossary/glossary/educational-instruction), and you must have a specific instructional purpose in mind (e.g., next week’s lesson) - you cannot make copies just in case you may need it in the future.
* Your use must not be for commercial advantage or profit.
* Your use must not conflict with the normal exploitation of the video - eg if the material can be purchased in the required format then it must purchased.
* Your use must not unreasonably prejudice the copyright owner, for example:
	+ you must not use more of the YouTube video than required for [educational instruction](http://www.smartcopying.edu.au/glossary/glossary/educational-instruction),
	+ you must not allow further copies of the YouTube video to be made,
	+ access to the YouTube video should be limited to only the students who need it for the [educational instruction](http://www.smartcopying.edu.au/glossary/glossary/educational-instruction), and
	+ if on a [digital teaching environment](http://www.smartcopying.edu.au/glossary/glossary/digital-teaching-environment-%28dte%29), the YouTube video should be archive or deleted when it is no longer required.

It is good practice to mark copies made under the Flexible Dealing Exception with words similar to: "Copied under section 200AB of the Copyright Act 1968".

For further advice on downloading YouTube videos, [contact the NCU](http://www.smartcopying.edu.au/copyright-guidelines/footer-menu/contact-us) or your [local copyright manager](http://www.smartcopying.edu.au/copyright-guidelines/footer-menu/contact-us).

For further information, see the Smartcopying website at:

* <https://www.smartcopying.edu.au/information-sheets/schools/flexible-dealing>
* <http://www.smartcopying.edu.au/information-sheets/schools/using-youtube>
* <https://www.smartcopying.edu.au/information-sheets/schools/copyright-in-the-digital-teaching-environment-a-manual-for-schools/films-and-videos>

**Additional Information**NCU is always here to provide copyright assistance and advice to schools and TAFEs (excluding Victorian TAFEs). If you have any questions or need additional information, please visit the Smartcopying website (http://www.smartcopying.edu.au/) or you can contact us on Tel: 02 7814 3855 and at smartcopying@det.nsw.edu.au

The purpose of this update is to provide a summary and general overview of selected copyright issues. It is not intended to be comprehensive nor does it constitute legal advice. If you need to know how the law applies in a particular situation, please get advice from the National Copyright Unit.