**Flexible Dealing Exception**

If you want to use material for a specific educational purpose you may, in limited circumstances, be able to rely on the flexible dealing exception.

**What material does the flexible dealing exception cover?**

The flexible dealing exception applies to all kinds of material (eg text, sound recordings, films), however schools generally rely on it to copy audio-visual materials. This is because there are licences in place that apply to other types of works, and you can only rely on the flexible dealing exception if you can’t rely on the statutory licences, the schools music licence or one of the other copyright exceptions to use material in the way you intend.

If you are using:

* text or artistic works, you may be able to rely on the Statutory Text and Artistic Works Licence
* television or radio broadcasts, you may be able to rely on the Statutory Broadcast Licence
* music or soundtracks, you may be able to rely on the school music licences with the music collecting societies
* material to include in an exam, you may be able to rely on the exam copying exception
* material in order to make it accessible to students with a disability, you may be able to rely on the disability copyright exceptions.

Another exception in the Copyright Act, section 28, allows teachers to use all forms of content in classroom teaching (eg reading a book out loud or playing a documentary to students in class).

**What does the flexible dealing exception allow schools to do?**

The flexible dealing exception allows you to use material in a range of ways (eg copy, upload to the school digital teaching environment (DTE), adapt, perform). Common activities are:

* downloading a YouTube video to play in class
* making a digital copy of a DVD to upload to a school’s [DTE](https://www.smartcopying.edu.au/glossary/glossary/digital-teaching-environment-%28dte%29) in order to play to a class when the film is not commercially available in an MP4 format
* compiling extracts of audio-visual material for use in class (eg making a compilation of short extracts of several films for an English class) when it is not possible to buy a similar teaching resource.

**When will the flexible dealing exception apply?**

**If you need the material for educational instruction**

The flexible dealing exception will only apply if you need the material for educational instruction (eg for teaching a particular lesson or course). You can’t rely on this exception for ‘just in case’ copying.

Educational instruction includes:

* teaching
* preparing to teach
* compiling resources for student homework or research
* doing anything else for the purpose of teaching.

**If your use does not conflict with the normal exploitation of the material**

You need to ensure that your proposed use does not conflict with the normal exploitation of the material or unreasonably prejudice the interests of the copyright owner. In other words, if you can buy the material in the format you need within a reasonable time, or obtain a licence for your proposed use on reasonable terms, then you must do that instead of relying on the flexible dealing exception.

If you are unable to buy or license the material, you may be able to rely on the flexible dealing exception provided you:

* **ensure no further copies or downloads can be made**(eg if you are uploading content to the school digital teaching environment (DTE), make sure it is view only)
* **limit access to the students/classes that need it for the specific instructional purpose**(eg if you are uploading a film to the school DTE for a year nine English class, only make it available to the students in that class)
* **only use the amount of material that you need**(eg if you only need to show students an extract of a film, you won’t be able to rely on the flexible dealing exception to copy the entire film)
* **only make the material available for the time needed for the course of study** (eg if students need to access an excerpt of a documentary on the DTE for a course on the Great Depression, archive or disable access by students to the documentary once it is no longer needed by the students).

You must not make a profit from anything you use under the flexible dealing exception (eg charging parents to attend a student performance). Cost recovery is okay (eg passing on the cost of a USB drive purchased to provide a student with content for a lesson).

**Examples of other ways you may able to use material under the flexible dealing exception**

You may be able to:

* translate an extract of an Australian novel into Japanese for a Japanese language class, where you cannot buy a copy of the book in Japanese
* stage a free practice performance of a play on a drama syllabus for family and friends to allow drama students to practice for a performance assessment
* prepare an arrangement of a musical work for students to perform in a music class when you cannot buy the arrangement you need
* adapt a short story into a play script.

**Labelling material**

It is a good idea, where practicable, to label copies or material made under the flexible dealing exception with words similar to:

This material has been copied and communicated to you in accordance with the educational use provisions 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 [insert date material has been copied and made available to students].

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