

## Exceptions to Copyright

There are many exceptions to copyright infringement in the *Copyright Act 1968 (Cth)*. If an exception applies to your use of copyright material, you are not required to obtain permission from the copyright owner in relation to that use and you may rely on the exception to defend any copyright infringement claim.

**If you want to rely on a particular exception to copyright but you are unsure whether the exception applies to your use, you should seek legal advice.**

The table below sets out all the exceptions in the Copyright Act. It is based on a table created by the Copyright Law Review Committee for its Copyright and Contract Report in 2002 and later revised in the Attorney-General's Department's Issues Paper, *Fair Use and Other Copyright Exceptions* in 2005. It has been updated to include the legislative amendments passed in 2006 and 2017. For more details about the 2017 amendments, see our information sheet [Copyright Amendment \(Disability Access and Other Measures\) Act 2017](#).

FAIR DEALING		
The concept of fair dealing has been embedded in copyright through the common law. In order for a certain use of copyright material to be a fair dealing, it must fall within one of these exceptions in addition to being "fair". Whether a person's use of copyright material is "fair" depends on the circumstances of each case.		
Section	Exception	Historical/Policy Basis
ss 40, 103C	Research or Study	Introduced for the purpose of promoting and facilitating education and research.
ss 41, 103A	Criticism or Review	The exception is based on the assumption that copyright owners ordinarily expect to have their works subjected to criticism and review for the purposes of providing potential consumers with information about the works.
ss 42, 103B	Reporting News	Policy basis derived from the public interest in promoting the free flow of knowledge, ideas and information, evident in the case law.
ss 41A, 103AA	Parody or Satire	Implemented following the Fair Use Review in 2006 to promote free speech and Australia's "fine tradition of satire" by allowing comedians and cartoonists to use copyright material for the purposes of parody or satire.

s 113E	Access by persons with a disability	<p>Implemented pursuant to the <i>Copyright Amendment (Disability Access and Other Measures) Act 2017</i> following ratification of the Marrakesh Treaty to enable persons with a disability to better access copyright material.</p> <p>This exception replaces the former disability exception used under s 200AB(4).</p>
S 113F	Use of copyright material by organisations assisting persons with a disability	<p>Implemented pursuant to the <i>Copyright Amendment (Disability Access and Other Measures) Act 2017</i> following ratification of the Marrakesh Treaty to enable organisations that assist people with a disability to use copyright material for that purpose.</p> <p>This exception replaces the now-repealed disability exception under s 200AB(4), and also the now-repealed Part VB statutory licence for print disability.</p>
s 43(2)	Giving professional advice	This exception was implemented for the purposes of facilitating the administration of justice, with the interest of assisting people to understand their legal rights and obligations.
s 200AB	Use of works and subject-matter for certain purposes; that do not conflict with a normal exploitation of the work or other subject-matter or unreasonably prejudice the legitimate interests of the owner of the copyright.	<p>This exception was introduced following the Attorney-General's Department Fair Use Review in 2006.</p> <p>Based on the rationale that if schools, universities, libraries and archives are given the chance to use copyright material for non-commercial purposes they will be able to better assist their users in the online environment.</p>
(2)		
(3)	<p>- by body administering library or archives</p> <p>- by body administering educational institution</p>	

OTHER (TECHNOLOGY BASED) EXCEPTIONS		
Section	Exception	Historical/Policy Basis
ss 43A, 111A	Temporary Reproductions – in course of communications	Introduced to ensure that the technical processes which are part of the use of technology do not impede access to copyright material.
ss 43B, 111B	Temporary, Reproductions – as part of technical process of use	<p>This exception was added as a counterpart to other amendments that provide stronger copyright protection against the making of unauthorised temporary copies.</p> <p>It ensures that the normal use of non-infringing material is not threatened by the making of electronic copies of a transitory nature.</p>
ss 47AA, 110C	Reproduction for purpose of simulcasting in digital form	Introduced to allow broadcasters to comply with requirements contained in the <i>Broadcasting Services Act 1992</i> that material be simulcast in digital and analogue form as part of the introduction of digital television in Australia.
ss 116AN - AP	Exceptions to anti-circumvention sanctions	<p>These are exceptions to the sanctions concerned with the circumvention of technological protection measures.</p> <p>They are designed to ensure there is reasonable access to copyright material in electronic form.</p>
Part V Div 2AA	Limitations on remedies available against carriage service providers	The <i>US Free Trade Agreement Implementation Act 2004</i> inserted Part V, Div 2AA into the <i>Copyright Act 1968</i> creating safe harbour provisions for carriage service providers.
s 116AC	Providing facilities or services for transmitting, routing or providing connections for copyright material, or the intermediate and transient storage of copyright material in the course of transmission, routing or provision of connections.	These exceptions are contingent upon compliance with the conditions set out in 116AH.
s 116AD	Caching copyright material through an automatic process.	
s 116AE	Storing, at the direction of a user, copyright	

s 116AF	material on a system or network controlled or operated by or for the carriage service provider.  Referring users to an online location using information location tools or technology.	
---------	--	--

<b>COMPUTER PROGRAM EXCEPTIONS</b>		
<b>Section</b>	<b>Exception</b>	<b>Historical/Policy Basis</b>
s 47B	Reproduction for normal use/study of a computer program	This exception ensures that computer programs can be used in their normal capacity. It also facilitates competition and growth in the computer software industry.
s 47D	Reproduction for making interoperable products	Introduced for the purpose of maintaining the international competitiveness of Australia's software developers.
s 47E	Reproduction for correcting errors	<p>Introduced to ensure that software users could promptly repair malfunctions in vital operating systems.</p> <p>At the time of introduction there was particular concern about the Y2K bug at the turn of the millennium, where error- free copies of computer programs may not have been readily available.</p>
s 47F	Reproduction for security testing	Security testing is seen as a legitimate activity.

MISCELLANEOUS FREE EXCEPTIONS		
Section	Exception	Historical/Policy Basis
ss 43(1), 104	Acts done for judicial proceedings	These exceptions are designed to facilitate the administration of justice.
s 182A	Reproduction of statutory instruments and judgments	<p>This exception facilitates access to, and promotes an awareness of the law.</p> <p>It allows a single copy of the whole or part of a prescribed work (statutory and judicial material) to be made by or on behalf of a person for a particular purpose.</p>
s 44	Inclusion of works in collections for use by places of education	<p>Promotes education and research.</p> <p>The inclusion of short published works is permissible if, the collection is described in an appropriate place, the original work or adaptation was not published for the purpose of being used by places of education, the collection consists principally of matter in which copyright does not subsist and sufficient acknowledgement of the work or adaption is made.</p>
s 44BA	Acts done in relation to certain medicine	<p>This exception was implemented by the <i>Therapeutic Goods Legislation Amendment (Copyright) Act 2011</i>.</p> <p>Facilitates access to product information regarding certain medicines.</p>
ss 44BB, 104C	Use of works, sound recordings and cinematograph films shared for healthcare or related purpose	<p>These exceptions were implemented by the <i>Health Legislation Amendment (eHealth) Bill 2015</i>.</p> <p>Allows works, sound recordings and cinematograph films which substantially comprise of healthcare information to be shared for healthcare-related purposes without infringing copyright.</p>

REPRODUCTION AND RELATED USES		
Section	Exception	Historical/Policy Basis
ss 44B, 112B	Reproduction of writing on approved labels on chemical products containers	Introduce in 1994 by the <i>Agricultural and Veterinary Chemicals (Consequential Amendments) Act</i> as part of Government policy on the marketing of generic agricultural and veterinary chemical products in Australia.
ss 47, 70 and 107	Reproduction of works and sound recordings by a broadcaster for purpose of broadcasting	In the course of licensed broadcasting, the making of 'ephemeral' reproductions is expressly recognised in the Berne Convention on copyright as a practical incident of broadcasting.
s 65	Specified reproduction and publication of works in public places:	It is considered reasonable to allow the creation and the legitimate reproduction of a painting, drawing, engraving or photograph of these works.
s 66	- sculptures and works of artistic craftsmanship	It would be impractical to control this type of copying.
	- buildings and models of buildings	
s 68	- publication of legitimate reproductions of artistic works in public places (or films referred to in s67)	
s 67	Incidental filming or televising of artistic works	It is considered reasonable to allow the incidental inclusion of these works cinematograph film or television broadcast as it would be impractical to control this form of copying.
s 72	Reproduction of part of an artistic work in later artistic work	Accommodates the copying (reference, or quotation) of parts of an artistic work by the author in a later work.
s 73 (1), (2)	Reconstruction of buildings	A practical measure to allow the reconstruction of buildings.
s 111	Recording broadcasts for replaying at more convenient time (private and domestic use)	This exception was introduced following the Fair Use Review in 2006. It recognised that the common consumer practice of 'time shifting' broadcasts should be permissible. The exception allows people to record TV or radio programs to watch at a more convenient time.
s 112	Reproductions of editions of works	This section allows the reproduction of the whole or part of an edition of a work without infringing copyright in the edition if the reproduction is made in the course of

		<p>specific dealings with the work that is exempted under the Act.</p> <p>This provision was inserted to provide consistency within the Act, namely the dealings exempted under ss. 40-43, ss.49-50 and s. 51A and the copying of works pursuant to the statutory licences under Part VB and s. 182A.</p>
s 43C	Reproduction of works in books, newspapers and periodical publications in different form for private use	<p>Introduced following the Fair Use Review in 2006.</p> <p>This exception allows consumers to reproduce material such as newspapers and books into different formats for their own private use (e.g. converting hardcopy books into electronic format).</p>
s 47J	Reproduction of a photograph in different format for private use	<p>Introduced following the Fair Use Review in 2006. The Attorney-General's Department reviewed the operation of s47J in 2008, recommending no change be made to the section at that time.</p> <p>This exception allows a photograph in hardcopy form to be reproduced in electronic form or a photograph in electronic form to be reproduced in hardcopy form for private use.</p>
s 109A	Copying sound recordings for private and domestic use	<p>Introduced following the Fair Use Review in 2006, to recognise that format shifting of certain copyright material should be permissible.</p> <p>It allows people to transfer music from CDs they own onto their personal music players.</p>
s 110AA	Copying cinematograph film in different format for private use.	<p>Introduced following the Fair Use Review in 2006, to recognise that format shifting of certain copyright material should be permissible.</p> <p>The Attorney-General's Department reviewed the operation of s 110AA in 2008, recommending no change be made to the section at that time.</p> <p>This exception is narrow in scope, permitting the owner of a videotape embodying a film to copy the film in electronic form for their own private and domestic use.</p> <p>The intent of this provision was to allow consumers to continue to be able to view films purchased on VHS without the need to buy an increasingly obsolete video cassette player.</p>
s 113H (1)	Using copyright material with historical or cultural significance to Australia, in key cultural institution	<p>Originally implemented in the 2006 reforms and updated in 2017, with the idea that key cultural institutions should be able to make preservation copies of material in their collection, and visitors to the key cultural institution</p>



(2)	collections, for preservation purposes. An electronic preservation copy can be made available to visitors.	should be able to access them to view with reasonable precautions to prevent copying.
-----	--	---

PERFORMANCES, TRANSMISSIONS, BROADCASTS		
Section	Exception	Historical/Policy Basis
s 28	Performance of literary, dramatic or musical works or other subject-matter in the course of educational instruction	Facilitates and promotes education.
s 45	Reading or recitation of a literary or dramatic work in public or for a broadcast with sufficient acknowledgment	To assist in the public dissemination of information.
s 46	Performance of literary, dramatic or musical works at premises where persons reside or sleep	The Spicer Committee concluded that it is logical to equate this type of performance given in a guesthouse to that a person might receive in their own home.
s 106	Causing sound recording to be heard at a guest house or club	Similar justification to the Spicer Committee's rationale for s 46. This exception is narrower in scope and does not apply to performances for which an entry fee is charged, and is limited to non-profit organisations whose principal objects are charitable or are concerned with the advancement of religion, education or social welfare.
s 199 (1)	Playing or showing in public of broadcasts of literary or dramatic works	To assist in the public dissemination of information.
s 105	Public performance and broadcasting of sound recordings that originate overseas	Aims to prevent performing and broadcasting rights being extended to foreign-origin sound recordings that were first published in Australia.
s 199(2)	Public performance of sound recordings by playing or showing of broadcast in public	Exemption recommended by the Spicer Committee.
s110(1), (2)	Public performance of news films 50 years after the expiration of the calendar year in which the principal events depicted in the film occurred; and public performance of works contained in films for which the copyright has expired	<p>Promotes public access to film footage of historical events.</p> <p>This ensures that where the exception allows the public showing of a film, the copyright in the underlying works is not infringed (e.g. Music and speeches).</p>

<b>OTHER USES</b>		
<b>Section</b>	<b>Exception</b>	<b>Historical/Policy Basis</b>
s 110(3)	Use of sound recording made simultaneously with film soundtrack	This exception ensures that the playing of such sound recordings, does not infringe copyright in the film.
s 200(1), (2) & (2A)	Use of works and broadcasts for educational purposes	To assist in educational instruction.
ss 44A, C, D, E & F  ss 112A, C, D & DA	Importation of infringing articles:  - books and published editions (ss 44A & 112A)  - accessories to imported articles (ss 44C & 112C)  - computer programs (s 44E)  - electronic literary or music items (ss 44F & 112DA)	These provisions are not exceptions to the exclusive rights of copyright owners arising under s31(1) (works) and ss 85-88 (subject-matter other than works).  They are a defence to actions under ss 37 and 102 which state that copyright in works and subject-matter other than works will be infringed by the importation of an article in Australia without the licence of the copyright owner.

## COPYING BY LIBRARIES AND ARCHIVES

The initial copying provisions implemented the 1959 recommendations of the Spicer Committee. They are similar to the UK provisions designed to remove the potential risk of librarians being held liable for copyright infringement when making copies for students or for other libraries. The 2011 Hargreaves Review of UK Intellectual Property Law recommended extending the exceptions in UK law to include methods of digitisation for archiving works.

The exceptions facilitate education and scientific research making it easier to access specialist research material.

The *Digital Agenda Act (2000)* updated the library and archives provisions allowing them to copy electronic material, reproduce hard copy material in electronic form and to communicate electronic material forming part of the library's and archive's collection. In 2017, the *Copyright Amendment (Disability Access and Other Measures) Act* further amended these provisions to provide greater clarity and flexibility to libraries to make such copies and allow public access to them while balancing the interests of copyright owners.

Section	Exception	Historical/Policy Basis
ss 48A 104A	Copying by Parliamentary Libraries for MPs	Based on public interest in having an informed political process.
s 49	Reproducing and communicating works by libraries for:	An extension of the permission granted to a student to make a fair dealing copy of a work to a librarian acting on a student's behalf.
s 50	Users for research and study (user requests)  For other libraries or archives (interlibrary copying for (document supply)	In 1976, the Franki Committee argued that Australia's geographical constraints rendered inter-library loans impractical due to cost and efficiency. This argument was accepted, and this exception was justified on practical grounds.
s 51, s110A	Reproducing/communication of old unpublished works, films or sound recordings in libraries or archives	Assists scholarly research and the dissemination of its results.
s 51AA	Reproducing/communicating works in Australian Archives	Assists in making the Australian Archives' collection more accessible throughout Australia.
s 52	Publication of old unpublished works that are kept in libraries or archives and to which s 51 applies	In recognising the value and historical significance of unpublished works this exception facilitates scholarly research and the dissemination of its results.

s 53	Extension of exceptions under ss48A-52 to illustrations that accompany works copied	This exception recognises the impracticality of excluding illustrations accompanying works when, copying or communicating works under the library and archives copying provisions.
s 113H	Using copyright material in the collection for preservation purposes. An electronic preservation copy can be made available to visitors.	Implemented pursuant to the <i>Copyright Amendment (Disability Access and Other Measures) Act 2017</i> , this exception enables libraries to use material in their collection for preservation purposes, and give the public access to electronic copies of that material on library premises with reasonable precautions to prevent copying.
s 113J	Using copyright material in the collection for the purpose of research either in the that library or another library. An electronic research copy can be made available for visitors.	Implemented pursuant to the <i>Copyright Amendment (Disability Access and Other Measures) Act 2017</i> , this exception enables libraries to use material in their collection for research purposes, and give the public access to electronic copies of that material on library premises with reasonable precautions to prevent copying.
s 113K	Using material for purposed directly related to the care or control of the library's collection.	Implemented pursuant to the <i>Copyright Amendment (Disability Access and Other Measures) Act 2017</i> , this exception enables libraries to use material in their collection as necessary for the purposes of collection administration.

STATUTORY LICENCES		
Statutory licenses are a practical means of remunerating copyright owners for use of their material without requiring individual licences.		
Section	Exception	Historical/Policy Basis
ss 47, 70, and 107	Ephemeral reproductions made for the purpose of broadcasting, where the maker is not the broadcaster	Promotes efficiency in broadcast programming.
Part III, Division 6	Recording of musical works	The statutory licence was seen as a means of moderating the perceived fear of high royalty demands of music copyright owners for consent to the recording of their works.
s 108	Public performance of sound recordings	Facilitates access to published sound recording repertoire.
s 109	Broadcasting of sound recordings	Facilitates access by broadcasters to published sound recording repertoire.
s 113P(1)	Reproduction and communication of works and other subject-matter by educational institutions	Implemented pursuant to the <i>Copyright Amendment (Disability Access and Other Measures) Act 2017</i> to allow educational institutions to make multiple copies of works for teaching; and to reduce the inefficiencies and high transaction costs involved in individually seeking permission from copyright owners. Previously, this function was set out in Part VB of the Copyright Act (now repealed).
s 113P(2)	Off-air copying of broadcasts (including underlying works, films and sound recordings) by educational institutions	Implemented pursuant to the <i>Copyright Amendment (Disability Access and Other Measures) Act 2017</i> to provide educational institution with the ability to make off-air copies of any television program for educational purposes without having to seek permission from copyright owners.  Previously, this function was set out in Part VA of the Copyright Act (now repealed).
Part VC	Retransmission of free-to-air broadcasts	The Digital Agenda Act introduced a statutory licence scheme to allow the owners of copyright in works, films and sound recordings embodied in free-to-air broadcasts to obtain remuneration for the retransmission of the broadcasts.  Prior to this amendment, retransmitters were able to retransmit free-to-air broadcasts without the permission or payment of remuneration to either the owner of the

		copyright in the broadcast or the owner(s) of copyright in the underlying works, such as any music, written material or film.
Part VII, Div 2	Use of copyright material for the services of the Australian and State and Territory governments	Designed to simplify the means of remunerating copyright owners in order to promote the procedures of government and the administration of justice.

### Further information

For further information about copyright, our publications or seminar program, see our website ([copyright.org.au](http://copyright.org.au)).

If you meet our eligibility guidelines, a Copyright Council lawyer may be able to give you free preliminary legal advice about an issue that is not addressed in an information sheet. This service is primarily for professional creators and arts organisations but is also available to staff of educational institutions and libraries. For information about the service, see the Legal Advice section of our website ([copyright.org.au](http://copyright.org.au)).

### Reproducing this information sheet

Our information sheets are regularly updated - please check our website to ensure you are accessing the most current version. Should you wish to use this information sheet for any purpose other than your reference, please contact us for assistance.

### About Us

The Australian Copyright Council is an independent, non-profit organisation. Founded in 1968, we represent the peak bodies for professional artists and content creators working in Australia's creative industries and Australia's major copyright collecting societies.

We are advocates for the contribution of creators to Australia's culture and economy; the importance of copyright for the common good. We work to promote understanding of copyright law and its application, lobby for appropriate law reform and foster collaboration between content creators and consumers.

We provide easily accessible and affordable practical, user-friendly information, legal advice, education and forums on Australian copyright law for content creators and consumers.



Australian Government



*The Australian Copyright Council has been assisted by the Australian Government through the Australia Council, its arts funding and advisory body.*

© Australian Copyright Council 2017