

# Performance and communication of works and audio visual material in class – What am I allowed to do?

Schools are allowed to perform copyright material in class under a free exception in the Copyright Act (section 28). Recent amendments to the Copyright Act extended the exception to include communication of material to a class. So now, if your use meets the conditions set out below, you can perform and communicate copyright material to your class for free and without the copyright owner's permission.

## What is a performance?

A performance under the Copyright Act includes any mode of visual or aural presentation, such as:

- reciting a poem;
- showing a film (eg, a video or DVD);
- playing a sound recording (eg, a CD);
- staging a performance of a play; or
- displaying a diagram or plan on an overhead transparency.

## What is a communication?

A communication under the Copyright Act involves making copyright material available online or electronically transmitting copyright material.

'Making available' can include putting material on an intranet.

'Electronic transmission' includes email, streaming or electronic reticulation.

## When can I perform a work or audio-visual item in class?

Teachers and students can read or perform a literary, dramatic or musical work, or play sound recordings and films in class, where it is:

- in the course of education and is 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.

A class includes virtual classes and distance education students.

**Note: this exception does not extend to playing films or sound recordings for non-teaching activities such as rainy day film screenings, bus trips or school camps.**

### **When can I communicate works and audio-visual materials in class?**

Teachers and students can communicate:

- literary, dramatic and musical works;
- films and sound recordings;
- television and radio broadcasts (including works embodied in those broadcasts); and
- artistic works,

to classes, to enable classroom performances and playing of sound recordings and films in class using new technologies.

A class includes virtual classes and distance education students.

### **What uses of copyright material am I allowed to make?**

Some of the things you are allowed to do are to:

- use an electronic delivery system to transmit a television program or film from a central DVD player in the library to a monitor in the classroom;
- use virtual classroom software to show copyright materials, such as films, to external students;
- recite a poem to students in a virtual class over Skype;
- play a film from a content management system (such as myclasses, Moodle or ClickView) in class;
- make a film available via a content management system for access by distance education students for the purpose of a particular class; and
- display or project material to a class, such as a poem, on an electronic whiteboard or data projector.

### **What about storing material on the intranet or a content management system?**

Storing content on an intranet or a content management system involves communicating that material. (It can also often involve making an intermediate copy to get the material in a form suitable for uploading onto the intranet or the content management system).

Section 28 allows the communication of content when it is made merely to facilitate the classroom performance of that content. That means that if content is placed on the intranet or a content management system it should be removed at the end of the lesson or when it is no longer required for the class.

There is some overlap between what schools are allowed to do under section 28, the statutory licences and the new flexible dealings provision in section 200AB:

Type of use	Type of content	What is allowed	Copyright status
One off use (no storage beyond class)	All	Upload to intranet or content management system for the classroom performance. Material must not remain stored after the end of the class	Free
Longer term storage	Works (eg, books, text, photographs, diagrams, scores, poetry)	Upload allowed under the Part VB statutory licence (note copying limits apply – see National Copyright Guidelines for more information)	Paid for under the statutory licence
	Off-air broadcasts (TV and radio)	Upload allowed under the Part VA statutory licence	Paid for under the statutory licence
	Other audio visual content (eg, films and sound recordings)	Upload <b>may</b> be allowed under the new flexible dealings exception (s200AB). See information sheets on s200AB and format shifting for more information)	Free

Teachers are encouraged to choose free rather than paid for uses of copyright materials whenever appropriate for their teaching needs.

### What uses of copyright material am I not allowed to make under s28?

There are some uses of copyright material that ***you will not be able to make***, such as:

- making content available on an intranet or a content management system where it is not for the purpose of showing the content in class
- keeping content available on an intranet or a content management system for longer than the time needed for the class (ie, for permanent or longer term storage).  
*Note: you may be able to upload content to an intranet or content management system for a longer period of time under a statutory licence or under the new flexible dealings provision – see the table above;*
- communicating or performing a work, such as a poem, or playing a film or sound recording:
  - to the parents of students;
  - for a fundraising activity;
  - at a school excursion or camp where there is no teaching involved;
  - for non-teaching purposes in the school (eg, showing a film at lunch on a rainy day with no teaching involved).

For more information see the *National Copyright Guidelines* and information sheets, which are available at [www.smartcopying.edu.au](http://www.smartcopying.edu.au), or contact the National Copyright Unit on (02) 9561 1204 or email Delia Browne at [delia.browne@det.nsw.edu.au](mailto:delia.browne@det.nsw.edu.au).