

Electronic Copying and Communication

Failure to follow these GUIDELINES could lead to copyright infringement action.

The Part VB statutory licence, under the Copyright Act 1968 (the Act), allows Australian Catholic University to copy and communicate print and graphic works for the educational purposes of the university.

Part VB covers all copying of print and graphic works – photocopying, copying to slides, microfiche or overhead transparencies, scanning into electronic form and copying from the web – provided it is for the educational purposes of the university and otherwise complies with the strict rules set out in the Act and the Regulations.

The Digital Agenda amendments to the Act, which came into force in 2001, introduced a new right for copyright owners - the right to communicate a work to the public. Communication is defined in the Act as meaning each of "making available online" and "electronically transmitting". It is important to keep in mind that as with the "reproduction right" the "right" is the copyright owner's right. The introduction of this new right means that copyright works cannot be communicated, other than in accordance with the strict rules contained in Part VB, in the absence of some other licence or defence.

Requirements for compliance with Part VB

(1) Nature and purpose of the copying

To be covered by the scheme, a copy or communication must be made *by or on behalf of the University*, and it must be made *solely for the educational purposes of the University or another educational institution*. The relevant purpose is that which existed at the time the copy or communication was made.

The "educational purposes of the University" include:

- use to teach students;
- making the copy available to students, or communicating to students, as part of a course of study at the University;
- retention of a copy in the University library or elsewhere (e.g. by a staff member) as a teaching resource; and
- the administration of students and courses.

(2) Notice to users

Each licensed electronic copy and licensed communication **MUST** contain the following prominently displayed notice:

COMMONWEALTH OF AUSTRALIA

Copyright Regulations 1969

WARNING

This material has been reproduced and communicated to you by or on behalf of the Australian Catholic University pursuant to Part VB of the *Copyright Act 1968 (the Act)*.

The material in this communication may be subject to copyright under the 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.

This notice must be prominently displayed on each electronic copy made in reliance on Part VB and whenever a copyright work is communicated (i.e. made available on-line or electronically transmitted) in reliance on Part VB. It **MUST** appear either before or at the same time as the material being communicated appears on the screen.

(3) Reasonable steps to limit access

It is a requirement of the Part VB licence that the university take "all reasonable steps" to ensure that material electronically communicated in reliance on the Part VB licence can be **received or accessed ONLY** by people entitled to receive or access it, e.g. staff and students of the university or of another university with a remuneration notice in place. Copyright works made available on-line in reliance on Part VB must **NOT** be available for access by the general public.

Consult the University Copyright Officer, copyright.officer@acu.edu.au, for further information regarding this obligation.

(4) Monitoring the period during which material remains available on-line

Material which is communicated in reliance on the Part VB licence by being made available on-line can remain on-line indefinitely. However, there is deemed to be a fresh reproduction and a fresh communication at the end of each 12 month period that the material remains available on-line.

(5) Limits on the amount that can be copied or communicated

The Act imposes limits on how much of a particular work can be copied electronically or communicated.

If you are **copying from hard-copy to electronic form** (e.g., scanning a chapter of a book or a journal article into digital form), the following limits apply:

- in relation to articles contained in a periodical publication, the whole or part of an article can be copied. The licence does not extend to copying of, or of parts of, two or more articles contained in the same periodical publication *unless* the articles relate to the same subject matter;

- in relation to a literary or dramatic work contained in a published anthology, and comprising not more than 15 pages of the anthology, the whole or part of that work can be copied. An example would be an essay contained in an edited collection of essays;
- in relation to all other copying of literary, dramatic, musical or artistic works, a "reasonable portion" of the work can be copied. The Act deems that where a literary, dramatic or musical work which is published as a published edition (for example, a book or play) is copied, then provided no more than 10 per cent of the pages in the edition, or one chapter (whichever is more), is copied, the amount will be taken to be a "reasonable portion." If you take more than that, it generally will not be a "reasonable portion", unless the person doing or requesting the copying is satisfied, after reasonable investigation, that copies (other than second-hand copies) of the work cannot be obtained within a reasonable time at an ordinary commercial price; and
- in relation to artistic works (other than incidental artistic works), if the work has not been separately published (eg as a 35mm slide), the whole of the work can be copied or communicated. If the work has been separately published the work cannot be copied unless the person doing or requesting the copying is satisfied, after reasonable investigation, that copies (other than second-hand copies) of the work cannot be obtained within a reasonable time at an ordinary commercial price.

If the **work you are copying or communicating is already in electronic form** (e.g. an electronic journal from a CD-ROM – assuming your copying and/or communication is not already paid for and governed by a subscription agreement - or the Internet), the following limits apply:

- in relation to articles contained in a periodical publication, the whole or part of an article can be copied or communicated. The licence does not extend to copying or communication of, or of parts of, two or more articles contained in the same periodical publication *unless* the articles relate to the same subject matter;
- in relation to musical works, 10 per cent of the work (unless the work has been separately published and the person who makes the reproduction is satisfied, after reasonable investigation, that the work is not available in electronic form within a reasonable time at an ordinary commercial price);
- in relation to all other copying of literary or dramatic works, a "reasonable portion" of the work can be copied. The Act deems that where an electronic copy of a literary or dramatic work which is published as a published edition (for example, a book or play) is copied, then provided no more than 10 per cent of the words in the edition, or, if the work is divided into chapters, one chapter (whichever is more), is copied, the amount will be taken to be a "reasonable portion." If you take more than that, it generally will not be a "reasonable portion", unless the person doing or requesting the copying is satisfied, after reasonable investigation, that copies (other than secondhand copies) of the work cannot be obtained within a reasonable time at an ordinary commercial price; and
- in relation to artistic works, the whole of the work can be copied. There is no need to inquire as to whether or not the work has been separately published and is available for purchase.

A **very important limitation** on the communication of works is that if a university wishes to make available on-line a reasonable portion of a work (other than an article contained in a periodical publication) it can only do so if no other part of the same work continues to be made available at the same time. To illustrate, if the Faculty of Arts and Sciences copied a chapter of Patrick White's 'Voss', and made this available on-line, no other faculty could make another part of the same work available on-line in reliance on the Part VB licence until this first part is taken down. Failure to comply with this limit will result in loss of the licence for the second (and subsequent) portions of a work made available on-line.

This new strict copying limit does **NOT** apply to journal articles.

NOTE: The protection against infringement afforded by Part VB **will be lost** if the copy is, with the permission of the University, used for a purpose other than the educational purposes

of the institution; made, sold or otherwise supplied for a financial profit; or given to an educational institution which does not at that time have a remuneration notice in force.

John Cameron Executive Director, University Services
28 February 2006