

NEW AUSTRALIAN COPYRIGHT LAWS

USE OF COPYRIGHT MATERIAL FOR CERTAIN 'SPECIAL' PURPOSES

New provisions allow copyright material to be used for 'special' purposes which benefit the broader Australian community.

What are the special purposes covered by the new exception?

- by a library or archives – for maintaining or operating the library or archives or providing library services
- by an educational institution – for giving educational instruction, and
- by a person with a disability or someone else – for obtaining a copy of the material in a form which assists the person with a disability.

When is a particular use permitted?

A particular use will be allowed without the copyright owner's permission if:

- the use is not made partly to obtain a commercial advantage or profit; and
- the use:
 - amounts to a 'special case'
 - does not conflict with a normal exploitation of the material, or
 - does not unreasonably prejudice the legitimate interests of the copyright owner.

The prohibition on obtaining a commercial advantage or profit does not prevent charging a fee, on a cost-recovery basis, for providing a service to users.

The term 'special case' has the same meaning as in Article 13 of the Agreement on Trade-Related Aspects of Intellectual Property Rights. It means that, as well as being for one of the precise purposes set out in the exception, the use must also be narrow in scope.

What kinds of uses are allowed?

Whether a particular use is allowed would be decided by a court if a copyright owner and user disagree and seek a legal decision. However, examples of circumstances where someone in future might claim that s 200AB applies could include:

- a library using a work without the copyright owner's permission because the copyright owner could not be identified or contacted

- a school converting into another format a video cassette of teaching material because the material is no longer commercially available, or
- a person with a print disability (or their family, friends or an organisation) converting a hard copy of a book into a read-aloud or more appropriate version.

How are existing exceptions in the Act affected?

The new exception is intended to cover cases where there is no other specific exception or statutory licence in the Act that authorises the particular use. For example, a school cannot rely on the new exception to reproduce copyright material for teaching purposes if the reproduction is covered by the statutory licence in Part VB of the Act.

This fact sheet provides general information only and is not a substitute for professional legal advice.



Australian Government

Attorney-General's Department