

## Copyright activities in the education sector that are not ‘paid for’

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### INTRODUCTION

Copyright Agency has fixed term, flat rate agreements with the education sector.

The fee negotiations involve the following:

1. estimates of the overall extent of reliance on the statutory licence (that is, copying and sharing of content for educational use that would otherwise require permission);
2. differential valuation of different types of content and use; and
3. negotiated outcomes on a range of matters of law or principle on which the parties do not agree (that is, on which they preserve their position for the future).

### ESTIMATES OF EXTENT OF RELIANCE ON STATUTORY LICENCE

The estimates are based on surveys of activity in statistical samples of schools and universities, carried by independent research company AMR. The education sector is involved in both the survey design, and training of teachers who complete the surveys.

There are two points at which uses are excluded from estimates of overall usage:

1. uses that are not recorded in the surveys in the first place; and
2. uses that are recorded in the surveys, but excluded from fee negotiations in accordance with data processing protocols agreed between Copyright Agency and education sector representatives.

Uses excluded from consideration include those that:

- do not ordinarily require copyright permission;<sup>1</sup>
- the content creator has notified us are directly licensed for educational use (e.g. Google maps);
- are presumed to be directly licensed for educational use;<sup>2</sup>
- are presumed to have no value (such as ‘technical’ copies); and
- are not practicable to ‘measure’.

Processing exclusions include:

- quotations and extracts of three paragraphs or less;
- material created exclusively by the surveyed institution’s current employees: teacher’s own work;
- media or press releases;
- examination papers/materials if used for assessment purposes;
- logos;
- advertisements;
- TV guides; and
- content published by Commonwealth and some State departments and agencies.<sup>3</sup>

In addition, overall discounts are negotiated for uses such as the following:

- the use of ‘small portions’;

<sup>1</sup> E.g. because the content is not protected by copyright; because part used is not ‘substantial’; because the use is covered by a free exception.

<sup>2</sup> Such as from a website with terms of use that allow ‘non-commercial use’.

<sup>3</sup> unless we have been instructed by the relevant agency not to exclude it

- copying from 'blackline masters';<sup>4</sup> and
- use of content that may lack sufficient 'originality' to be protected by copyright.<sup>5</sup>

### **'FREE' EXCEPTIONS IN THE COPYRIGHT ACT FOR EDUCATION**

There are exceptions that pre-dated the statutory licence and have remained in the Act (some have since been amended in some respects).

The main ones for text and images relate to:

- exams (we agreed to the extension of this exception to online exams, that is part of the draft amendment bill circulated by the government late last year)
- 'small portions': 2 pages or 1% of pages in an edition
- images copied together with text ('accompanying' illustrations)
- 'communications' of images to a class
- external students

### **INTERNET CONTENT**

The government extended the educational statutory licence in 2000 to cover digital content and use, specifically to allow (among other things), educational use of content sourced from the internet.

Following the amendments, there were discussions between Copyright Agency and the education sector about how, in practice, to apply the statutory licence to content sourced from the internet. It was agreed that the terms of use for websites would be referred to as an indicator of whether the use was made under licence from the copyright owner or not. So for example, the use of content that is licensed (under the terms of use) for personal use is treated as done in reliance on the licence (because the teacher would otherwise require permission), whereas use of content licensed for 'educational use' or 'non-commercial use' is treated as outside the licence.

That agreement has remained in place but can, of course, be renegotiated. And the Copyright Tribunal can make a determination about the value (if any) of content sourced from the internet.

### **CURRENT AGREEMENTS**

The agreements for the entire schools sector are negotiated with the Copyright Advisory Group for the COAG Education Council (CAG).

The current agreement with the schools sector provides for a flat annual rate for every school student (i.e. it is the same for primary and secondary; government, Catholic and independent schools; and for every state and territory). It is around \$17 per student per year. When adjusted for student numbers, volume of copying and consumer price index, licence fees have remained stable over the last 10 years. In real terms, the current per-student rate is lower than it was in 2012. The current agreement is due to expire at the end of 2017.

The current agreement for the university sector (negotiated with Universities Australia) will expire at the end of 2016, and a new agreement will be negotiated over the next few months.

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<sup>4</sup> 'Blackline masters' are workbooks sold with a licence to the purchaser to photocopy. Survey records do not indicate whether or not the recorded use was covered by the licence.

<sup>5</sup> Such as the TV guides at issue in the High Court decision in Ice TV