

Audio-Visual Copying and Communication

Procedures for Universities operating under a Sampling System (Revised as at 12 September 2001)

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Sampling Procedures

(Revised as at 12 September 2001)

These PROCEDURES supersede ALL earlier Audio-Visual Procedures.

Introduction

Your university pays Screenrights for **copying** and **communicating** broadcasts (radio, television, cable and satellite) under the Part VA statutory licence. The amount which your university pays Screenrights for this copying and communication is determined by the number of students. Currently, the amount payable is \$4 per EFTSU.

As a result of an Agreement entered into by your university in July 2001, staff will no longer be required to keep full records of audio-visual copying *unless* your university is being sampled. This is likely to be for a 6 or 12 week period once every 4 or so years. (At present, there is no sampling of communications. The sampling system will be amended some time in the future to include sampling of communications as well as copies). Every staff member will, however, be required to comply with other obligations all year round. These obligations are described in detail below.

The rules are strict, and failure to comply can lead to copyright infringement action.

What do you need to do?

Following the steps outlined below will help ensure that the university complies with its obligations under Part VA of the Copyright Act:

1. The Copyright Officer should assume responsibility for ensuring that copyright obligations are complied with.
2. The Copyright Officer or equivalent senior administrative personnel, and the head of any central copying unit, should each receive a copy of these **PROCEDURES**.
3. The Copyright Officer should arrange for all staff to receive a copy of the **AUDIO-VISUAL COPYING AND COMMUNICATION GUIDELINES**, and ensure that all staff know where to go for copyright information as needed. (Staff should be reminded that earlier versions of the Guidelines have been superseded by the document which is being circulated.)
4. A copy of the **NOTICE TO ALL STAFF – IMPORTANT CHANGES TO THE COPYRIGHT ACT (which was circulated earlier this year)**, the **AUDIO-VISUAL COPYING AND COMMUNICATION GUIDELINES**, and any other relevant documentation prepared by the University, should be provided to all new staff as part of the induction documentation.

5. The University must continue to ensure that each **analog copy** (eg videotape or audio-tape) of a broadcast made in reliance on Part VA (or the container in which it is kept) is labelled. The label must contain the following information:

<p>Made for [name of university] under Part VA of the Copyright Act 1968</p> <p>Date program was broadcast _____</p> <p>Date this copy was made _____ (if different)</p>

6. There is no requirement to mark or label copies which are made in electronic form (eg a copy made on a CD-ROM or computer hard-drive). However, if such a copy is communicated, the steps set out in paragraph 7 below must be followed.
7. Each **communication** of a copy of a broadcast (in reliance on Part VA) must contain an electronic notice **in the following form**:

<p style="text-align: center;">COMMONWEALTH OF AUSTRALIA</p> <p style="text-align: center;">Copyright Regulations 1969</p> <p style="text-align: center;">WARNING</p> <p>This material has been copied and communicated to you by or on behalf of Latrobe University pursuant to Part VA of the <i>Copyright Act 1968</i> (the Act).</p> <p>The material in this communication may be subject to copyright under the Act. Any further copying or communication of this material by you may be the subject of copyright protection under the Act.</p> <p>Do not remove this notice.</p>
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This notice **MUST** appear either before or at the same time as the material being communicated appears on the screen.

The university should ensure that each copy of a broadcast which is currently available online (in reliance on the Part VA licence) contains a notice in the form described above.

8. The University is required to take "all reasonable steps" to ensure that access to broadcasts made available on-line in reliance on Part VA is restricted to those people entitled to receive access, eg staff and students of the university or of another university with a remuneration notice in place. However, there may be a cost advantage if material is made available, on a password authenticated basis, only to those students who need to receive it. This is because in any future

Copyright Tribunal case regarding the rate to be paid by universities for such communications, the Tribunal may take into account the numbers of students who had access to a communication. In any event, Copyright works made available online in reliance on Part VA must **NOT** be available for access by the general public.

9. A version of the Copyright warning notice that has since 1980 been affixed on or near all library photocopiers, and which helps protect the university against infringement action, has been prescribed for machines (including computers) which may be used to copy audio-visual works. All such machines (eg video-recorders and computers likely to be used to copy audio-visual works) which are either situated in the library, or which are made available for the use or convenience of people using the library, should have affixed on or near them a notice in the prescribed form. A copy of the prescribed notice, in the dimensions required by the Act (ie 297 mm long and 210 mm wide), is annexed to these procedures. There may be some advantage to the university in affixing this notice on or near any machine – wherever situated within the university – which is likely to be used to copy audio-visual works.

Sampling

You will be informed when your university has been chosen to take part in sampling. In the period leading up to the commencement of sampling, administrative and academic staff will receive instruction from the sampling body, ACNielsen, with respect to completion of the sampling forms and the administration of the sampling system. Copies, including preview copies, need only be recorded during the period of the sample.

Payment

Screenrights will invoice your university on or after 1 January, 1 April, 1 July and 1 October in each year. Payment is due within 28 days of receipt.

Inspection of Records

The Agreement which your university has entered into with Screenrights provides for Screenrights to give written notice to the university that it wishes to attend, the university, on seven days' notice, and inspect all relevant records held at the university which relate to the making of copies of broadcasts in reliance on the statutory licence or the communication of such copies in reliance on the statutory licence. Such an inspection can only be carried out during a period that audio-visual copying and communication is being sampled at the university. The university must provide reasonable and necessary facilities and assistance for the effective exercise of this right by Screenrights.

Please advise the AVCC immediately your university receives such a notice.

Copyright Act and Regulations

Part VA of the *Copyright Act*, 1968, and in particular sections 135A to 135N, contain the provisions on licensed copying and communication of broadcasts by educational institutions, including provisions relating to preview copies/communications; the form of remuneration notices; and marking, notice and record-keeping requirements. These must be read together

with Part 5 of the Copyright Regulations, and in particular Regs 23A to 23H. When consulting the Copyright Act, you should ensure that you are consulting a copy which has been updated to incorporate the Digital Agenda amendments. The Regulations contain important detail that is not in the Act.

The AVCC lawyers, Baker and McKenzie, have developed a set of **GUIDELINES** for use by universities. It is recommended that these **GUIDELINES** be used by the Copyright Officer in answering specific questions raised by staff.

Contacts

For further information on university copyright contact Bernice Anderson on (02) 6285 8200, email: b.anderson@avcc.edu.au at the AVCC.

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Annexure

PRESCRIBED FORM OF NOTICE FOR SECTION 104B OF THE COPYRIGHT ACT 1968 IN RELATION TO THE COPYING OF AUDIO-VISUAL ITEMS

COMMONWEALTH OF AUSTRALIA

Copyright Regulations 1969

WARNING

Copyright owners are entitled to take legal action against persons who infringe their copyright. Unless otherwise permitted by the *Copyright Act 1968 (the Act)*, unauthorised use of audio-visual items in which copyright subsists may infringe copyright in that item.

It is not an infringement of copyright in an audio-visual item to use that item in a manner that is a fair dealing under section 103C of the Act.

Section 103C of the Act relates to fair dealing for the purpose of research or study and sets out the matters that must be considered in determining whether a reproduction of an audio-visual item is a fair dealing.

A court may impose penalties and award damages in relation to offences and infringements relating to copyright material.

Higher penalties may apply, and higher damages may be awarded, for offences and infringements involving the conversion of material into digital or electronic form.