

**Print and Graphic
Copying and Communication
Procedures**

For Universities operating under a Sampling System

(Revised as at 9 February 2001)

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PRINT AND GRAPHIC COPYING AND COMMUNICATION – PROCEDURES FOR SAMPLING UNIVERSITIES

These PROCEDURES deal with important changes to the Copyright Act. Failure to comply with them could lead to copyright infringement action.

Introduction

Your university pays Copyright Agency Limited (CAL) for **copying** copyright print and graphic material under the Part VB statutory licence. From 4 March 2001, this statutory licence will also apply to **communications** of print and graphic material. A copyright work is **communicated** whenever it is **electronically transmitted** (eg sent to students as an email attachment), or **made available online** (eg uploaded onto a university server in a form which is able to be accessed by staff or students), to another person or persons.

This **PROCEDURES** document is intended to help your university comply with its obligations under Part VB of the *Copyright Act*, and in particular its obligations with respect to **electronic copying and communications**. The **PROCEDURES** do not deal with hard-copy copying. This is because the Copyright Tribunal has determined a sampling system which surveys hard-copy copying in universities. The copying limits and other statutory obligations with respect to hard-copy copying remain unchanged.

What will change after 4 March 2001?

The amount your university pays CAL will not change (other than by way of increases for indexation) until at least January 2003. This is because your university has entered into an Agreement with CAL which covers hard-copy copying, electronic copying and the new communication right. However, the Digital Agenda amendments to the Copyright Act impose new obligations on your university which **MUST** be complied with. These obligations are discussed below. A more detailed discussion is contained in the **GUIDELINES**.

What do you need to do?

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

1. The university should ensure that a suitable person takes responsibility for ensuring that the new obligations imposed by the Digital Agenda amendments to the Act 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 (or other nominated person) should arrange for the document headed **NOTICE TO ALL STAFF – IMPORTANT CHANGES TO THE COPYRIGHT ACT** be placed on all notice boards within the university. A copy of the document should also be provided to all staff. (Note: this may already have been done upon receipt of the Part VA Procedures. The **NOTICE TO ALL STAFF** relates to both Part VA and Part VB. It is not necessary to circulate two copies.)
4. The Copyright Officer should arrange for all staff to receive a copy of the **PRINT AND GRAPHIC ELECTRONIC COPYING AND COMMUNICATION GUIDELINES**, and ensure that all **staff** know where to go for extra copies and information as needed. A copy of the **GUIDELINES** should also be posted on the university web-site.
5. All new staff should receive a copy of the **NOTICE TO ALL STAFF – IMPORTANT CHANGES TO THE COPYRIGHT ACT** and the **GUIDELINES**, and any other relevant documentation prepared by the University, as part of their induction documentation.
6. Each licensed **electronic copy** and licensed **communication MUST** contain the following, prominently displayed, electronic notice:

COMMONWEALTH OF AUSTRALIA

Copyright Regulations 1969

WARNING

This material has been reproduced and communicated to you by or on behalf of La Trobe 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** appear either before or at the same time as the material being communicated appears on the screen.

The University **MUST** develop the appropriate systems to comply with the obligation to attach this notice to all licensed electronic copies and communications from 4 March 2001.

6(a) As part of the lead up to the introduction of the Digital Agenda amendments it will be necessary to ascertain – in respect of all works which have been made available online by the university prior to 4 March 2001 and which the university intends not to take down before 4 March 2001 – whether these are being communicated in reliance on the Part VB licence. If so, the notice set out above should be attached in the form described above.

7. The Digital Agenda amendments require the University to take "all reasonable steps" to ensure that **access** to copyright works made available on-line in reliance on Part VB 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 pass-word 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 on-line in reliance on Part VB must NOT be available for access by the general public.

8. 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.

No Electronic Use system has yet been agreed or determined. This means that there is no requirement – as yet – to record electronic copies or communications. However, as soon as such a system is introduced there will be a requirement to record (either periodically or full time, depending on the nature of the system) these "deemed" copies and communications. Your university must develop a procedure for monitoring the period during which material remains available on-line in order to be in a position to comply with this obligation.

9. Such a system should record:

?? the date on which each work was made available on-line;

?? the date on which the work ceased to be available on-line; and

?? any 'deemed' copying and communication which takes place as a result of the work remaining on-line for a period exceeding 12 months.

All staff should be notified of the importance of informing you of any material which they make available on-line, in reliance on the Part VB licence, in order to assist in this monitoring process.

10. The limits which apply to how much of a work can be communicated by being made available on-line are very strict. After 4 March 2001 it will no longer be possible for universities to make more than 10 per cent of a work available on-line in reliance on the Part VB licence. For example, if the Arts faculty has copied a chapter of Patrick White's Voss, and made this available on-line, no other faculty in

the university can 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. Nor does it apply to off-line copying. The University MUST develop a system for monitoring what parts of works are made available on line in order to comply with this obligation.

11. The **s 39A copyright warning notice** that has since 1980 been affixed on or near all library photocopiers, and which helps protect the university against infringement action, should now also be affixed on or near all machines (including scanners and computers) which are either situated in the library, or which are made available for the use or convenience of people using the library, and which are capable of making a reproduction of print and graphic works. 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 reproduce print and graphic works. Note that the Audio-Visual Procedures deal with a new copyright warning notice pursuant to s 104B of the Act, which relates to audio-visual copying. Any machine which is capable of being used to copy both print and graphic works and audio-visual works should have **BOTH** notices affixed on or nearby.

Inspection

The *Copyright Act* gives CAL the right to give the university seven days' notice in writing that it wishes to inspect all relevant records held at the university which relate to the making of copies and communications of works in reliance on the statutory licence, or to the amount of equitable remuneration payable. The university must provide reasonable and necessary facilities and assistance for the effective exercise of this right by CAL. Please inform the AVCC immediately if your university receives such a notice.

Legislation

Part VB of the *Copyright Act* covers the licensed copying and communication of works by educational institutions, including provisions relating to the form of remuneration notices; and the marking and record-keeping requirements. This must be read together with Part 5 of the Copyright Regulations, and in particular Regs 23JF to 23JL. The Regulations contain important detail that is not in the *Act*.

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For further information on university copyright contact John Mullarvey on (02) 6285 8204, email: tjm@avcc.edu.au or Bernice Anderson on (02) 6285 8200, email: b.anderson@avcc.edu.au at the AVCC.

Annexure

COMMONWEALTH OF AUSTRALIA

Copyright Regulations

WARNING

Copyright owners are entitled to take legal action against persons who infringe their copyright. A reproduction of material that is protected by copyright may be a copyright infringement. Certain dealings with copyright will not constitute an infringement, including:

?? A reproduction that is a fair dealing under the Copyright Act 1968 (**the Act**), including a fair dealing for the purposes of research or study; or

?? A reproduction that is authorised by the copyright owner.

It is a fair dealing to make a reproduction for the purposes of research or study, of one or more articles on the same subject in a periodical publication, or, in the case of any other work, of a reasonable portion of a work.

In the case of a published work in hardcopy form that is not less than 10 pages and is not an artistic work, 10% of the number of pages, or one chapter, is a reasonable portion.

In the case of a published work in electronic form only, a reasonable portion is not more than, in the aggregate, 10% of the number of words in the work.

More extensive reproduction may constitute fair dealing. To determine whether it does, it is necessary to have regard to the criteria set out in the subsection 40(2) of the Act.

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.