

Copyright

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Format shifting and section 200AB

A guide for WA TAFE colleges



Copyright



Format shifting and section 200AB

What is format shifting?

'Format shifting' is a term used to describe the copying of content from one technological format to another. Some examples of format shifting include copying a song from a music CD to a music player or converting a film on DVD to an MP4.

Under the Copyright Act, educational institutions have limited rights to format shift and reproduce copyright material. Section 200AB of the Act outlines these rights and the stringent criteria that must be met before format shifting is permitted. TAFE colleges must be aware that the format shifting and copying rights they have under this section of the Act are very limited.

Key points to consider before format shifting

- TAFE colleges are not permitted to format shift their whole collection (eg from DVD to a learning or content management system like Moodle™, Blackboard® or ClickView®) unless the conditions listed in the next section are met for each item in the collection.
- Check whether it is possible to buy a particular item in the desired format before attempting to format shift. For example, if a TAFE college wanted to transfer the content on a DVD to an MP4 format, employees should first check whether the title was available to purchase in an MP4 format.
- Any format shifting under s 200AB needs to be done for the purpose of giving educational instruction in the near future, not 'just in case' it is needed later, and only the amount required should be copied.
- TAFE colleges are now permitted to circumvent a technological protection measure (TPM) in order to rely on s 200AB.

Conditions to be met to allow format shifting

Some limited format shifting is permitted under the 'flexible dealing' exception detailed in s 200AB of the Copyright Act. A TAFE college is allowed to copy or format shift copyright material (eg a DVD or CD to MP3/MP4) under the following conditions.

- **No other exception or statutory licence can be applied in this situation.**

You cannot rely on the s 200AB exception if any other exceptions or statutory licences can be applied. For more information on exceptions, see 'Format Shifting' and 'The Flexible Dealing exception' at smartcopying.edu.au. For more information on statutory licences see 'Education Licences'.

- **You wish to use the content for a specific educational purpose.**

It is essential that the material is used for a specific teaching purpose (including remote teaching), ie that it is used in preparation for teaching or in preparation of materials for students to use for homework or research tasks.

A teacher equipped with only a DVD player in the classroom is permitted to format shift a film from another format to DVD format if it is a requirement for students to view it and it is not possible to purchase the film in DVD format within a reasonable time.

Making 'just in case' copies of content is not permitted under this exception and your use must not be commercial or to obtain a profit, however, cost recovery is fine.

- **Your use is not 'unreasonable', ie it does not conflict with the normal use of the work or unreasonably prejudice the copyright owner's interests.**

For this point you must consider all of the following factors:

- If it is possible to purchase or obtain a licence to use the material in the alternative format within a reasonable time, then you must do so. Only use as much as you need, no more.
- Take reasonable steps to ensure the content is accessible only to staff/students needing it, eg via password protection.

- Take reasonable steps to prevent further copies being made, eg limit audiovisual content access to streaming/viewing only.
- The original content must be lawful and not pirated.

Marking or labelling requirements for format-shifted copies

It is good practice to mark a format-shifted copy with words similar to:

‘Copied under section 200AB of the Copyright Act 1968’.

Can a TAFE college copy and store its entire collection of educational resource videos on a content management system?

As already stated, under s 200AB, a TAFE college is not allowed to format shift material unless all conditions listed under ‘Conditions to be met’ are met. Each item that the TAFE college wants to format shift must be considered under these terms. However, if the collection is in a TAFE library then the library copyright exceptions must first be considered, as s 200AB can only be relied on when no other exceptions apply. See ‘Library Copying’ at smartcopying.edu.au.

Can a TAFE college copy an educational resource on VHS to another format if the original format is deteriorating?

Yes, as long as the requirements are met, for example, that the teacher needs the resource for the purpose of educational instruction and that the TAFE college cannot purchase a new copy in the format needed. See ‘Flexible Dealing’ at smartcopying.edu.au.

In the past, libraries were only allowed to make a copy of a resource under s 200AB when it was already damaged or deteriorating. Libraries can now rely on the new preservation copying exception (s 113H) before a resource is damaged or deteriorating. The s 200AB exception can only be relied on if no other exceptions or statutory licences are applicable. For more information, see ‘Library Copying’ at smartcopying.edu.au.

Can a TAFE college format shift anything other than films?

Yes, as long as it meets the conditions under ‘Conditions to be met to allow format shifting’. For example, a lecturer could format shift an old language-lesson CD that cannot be purchased within a reasonable time.

If a TAFE college wishes to format shift a copy of music under section 200AB, for example, converting a CD to an MP3 file, the TAFE college will need to make sure that it is not possible to buy the material in the alternative format within a reasonable time. Note that many songs and albums are now available for purchase online.

Format shifting iTunes music

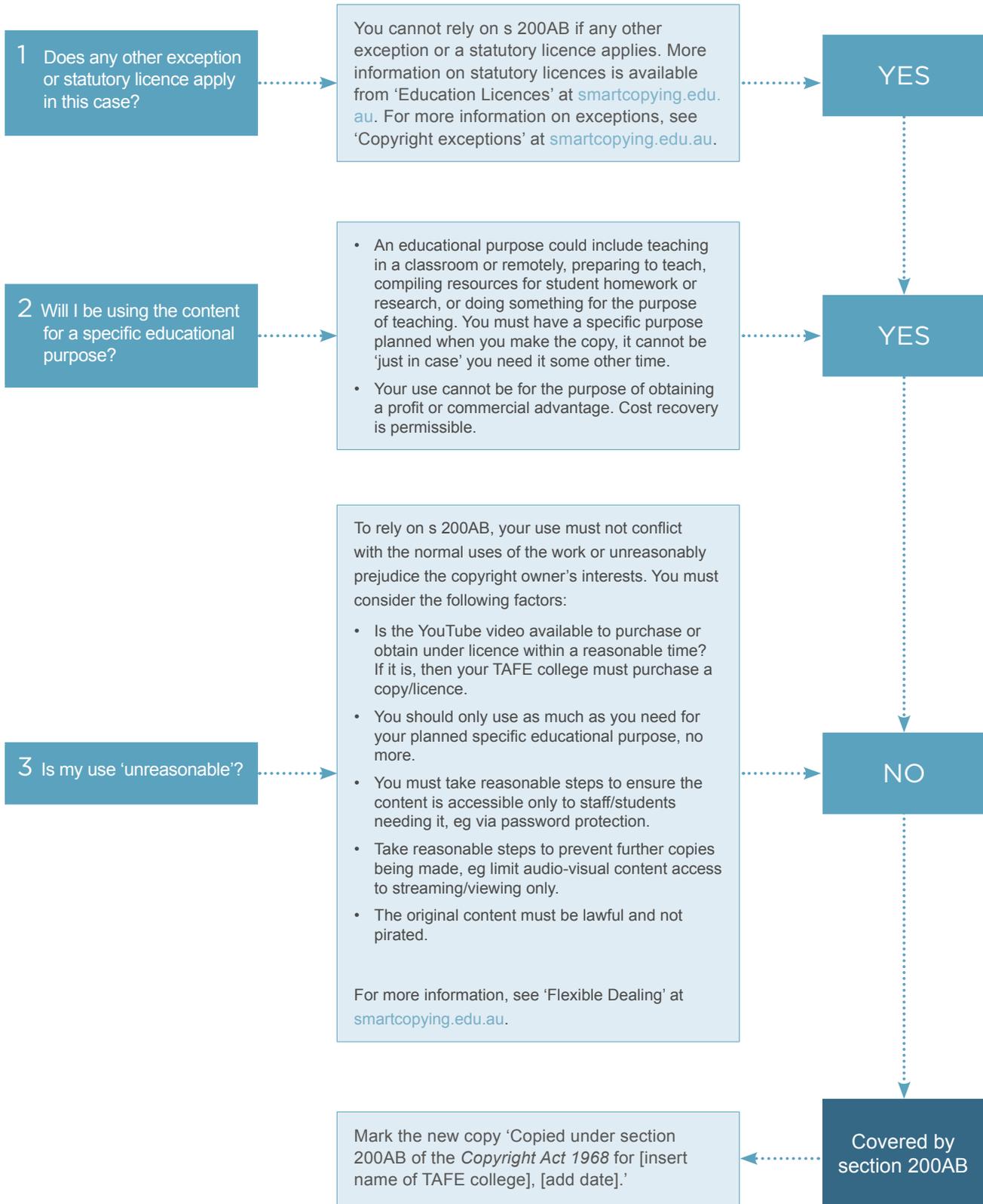
Educators are able to play content from digital media players such as iTunes under the conditions of section 28 (see ‘Performance and communication of works and audio visual material in TAFE classes’ at smartcopying.edu.au). Format shifting of iTunes music may be allowed provided all the appropriate conditions are met. For further information on this topic, please see ‘Educational use of music in TAFE’ at smartcopying.edu.au.

(iTunes is a trademark of Apple Inc., registered in the US and other countries.)

(Some content in the following flowchart is adapted from ‘Flexible Dealing’ at smartcopying.edu.au, under a [CC BY 4.0 licence](https://creativecommons.org/licenses/by/4.0/)).

“You cannot rely on the s 200AB exception if any other exceptions or statutory licences can be applied.”

Decision-making flowchart for section 200AB



For more information see the National Copyright Guidelines, available at smartcopying.edu.au or contact sectorcapability.ip@dtwd.wa.gov.au

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