



## *Information sheet*

**G026**

# Videos & DVDs: copying & downloading

December 2006

This information sheet is for people who want to know when it is legal to copy or download a video or DVD.

**The purpose of this information sheet is to give general introductory information about copyright. If you need to know about how the law applies in a particular situation, please get advice from a lawyer.**

For information about recording TV programs, see our information sheet *TV programs: home-taping*, at <http://www.copyright.org.au/film>.

We update our information sheets from time to time. Check our website to make sure this is the most recent version.

## Key points

- It is now legal for a person to copy a videotape he or she owns onto a DVD for private and domestic use.
- The new provision does not apply an infringing videotape.
- If you download a movie from the Internet for free, it may be a pirate copy, which means you infringe copyright by downloading it.

## Copyrights in a video or DVD

Copyright law in Australia is contained in the *Copyright Act 1968* (Cth) and in decisions of courts. Under the Act, copyright protection is automatic. There is no registration procedure in Australia for copyright protection.

In a video, the following elements are usually protected by copyright:

- the script or screenplay;
- each piece of music on the soundtrack; and
- the moving images and sounds.

In most cases, there will be other copyright material as well: for example, lyrics to the music; photographs; artwork in the titles or credits; pre-existing sound recordings of bands; and dance sequences.

DVDs will contain all of this material, as well as computer software. A DVD will also often include additional film footage and other materials.

## How long does copyright last?

Generally, copyright in the “film” aspects of a video or DVD (that is, in the moving images which make up the footage and in the sounds as recorded on a soundtrack) lasts for 70 years after copies of the film or video are made available to the public.

Videos and DVDs also usually include “underlying” material, such as screenplays and music. Copyright in this additional materials generally lasts for 70 years after all the relevant creators have died.

For detailed information, see our information sheet *Duration of copyright*, available at <http://www.copyright.org.au/introductory>.

## Copying a video or DVD requires permission unless a special exception applies

Owners of copyright have the exclusive right to do certain things with their material, including the right to make copies. This means that if you want to copy material that is protected by copyright, you need to get permission from the owner or owners of copyright unless a special exception applies.

### Copying part of a video or DVD

Unless a special exception applies, you will generally need permission to copy a part of a video or DVD. This is so even if the part you want to copy is a small amount of the whole video or DVD. Even an insignificant proportion of a film may include a substantial part of a song or other copyright work. What is important is not the amount or the proportion you want to copy, but its quality or distinctiveness.

## Some situations in which it is legal to copy a video or DVD

### Copying videotapes into an “electronic form”

It is now legal to make a copy “in electronic form”, for private and domestic use, of a videotape you own. This allows you, for instance, to copy the contents of a videotape onto a DVD, provided:

- you **own** the videotape;
- the videotape is **not** an infringing copy (for example, it was not illegally copied from another videotape);
- the videotape does **not** contain material recorded from TV (even if the recording was legal);
- the copy is in “electronic form” (you are not entitled to copy to another videotape); and
- the copy is for your private and domestic use.

The legislation says that the copy must be made to use instead of the original, but the government has said that “instead of”

indicates that the owner may view a film using the original videotape and by means of [the] copy in electronic form; that is, the owner is not required to store the original videotape.

Once you have made a copy from a videotape, there are restrictions on what you can do with the copy **and** with the original videotape. The copy will become an infringing copy if you:

- sell it or offer it for sale;
- rent it or offer it for rent;
- distribute it (for example, give it to someone); or
- dispose of the original videotape to someone (for example, if you sell it or give it away or donate it).

You can **lend** the copy to:

- people you are living with; and
- members of your family.

You cannot, however, lend the copy to anyone else.

Once you have made a copy, you cannot make another copy in an electronic form which is “substantially identical”. You may, however, be able to transfer the contents of the videotape in one electronic form, and also be able to transfer the contents to a digital file, in another electronic form, which can be viewed on a computer.

If making the conversion from video to “electronic form” involves the incidental making of temporary copies of the contents of the videotape, you must destroy the temporary copies as soon as practicable. If you do not, it is an infringing copy.

The new provision allows you to copy videotapes, but not to copy DVDs or digital downloads.

The government is required to carry out a review of the new provision by 31 March 2008.

## Research or study

You may copy a video or DVD for your research or study, provided the use is **fair**. When working out whether the use is fair, the things you need to consider include:

- how much of the video or DVD you want to copy; and
- whether you can buy a copy of the video or DVD.

In one case, the Court considered the meaning of the words “research” and “study” and held that they have the meanings given in the Macquarie Dictionary:

*research* – “diligent and systematic enquiry or investigation into a subject in order to discover facts or principles”.

*study* – “1. application of the mind to the acquisition of knowledge, as by reading, investigation or reflection. 2. the cultivation of a particular branch of learning, science, or art: *The study of law* 3. a particular course of effort to acquire knowledge: *to pursue special medical studies* ...5. a thorough examination and analysis of a particular subject...”

An example of fair dealing for research or study would be a student making a compilation of excerpts from movies as part of an assignment to show examples of non-verbal communication.

It would **not** be a fair dealing to copy an entire film for purposes of research or study if it is commercially available.

For further information on this exception see our information sheet *Research or study*, available at <http://www.copyright.org.au/permission>.

## Criticism or review

You may reproduce copyright material for the purposes of criticism or review without the copyright owner’s permission, provided the use is fair. For example, you may reproduce an extract from a video in a film review, provided your use is genuinely for the purpose of criticism or review. You must identify the work and its author.

We discuss this exception in more detail in our information sheet *Fair dealing*, available at <http://www.copyright.org.au/permission>.

## Parody or satire

You may now reproduce copyright material for the purpose of parody or satire, provided the use is fair.

We discuss this exception in more detail in our information sheet *Parody, satire & jokes*, available at <http://www.copyright.org.au/writing>.

## Copying by educational institutions

There are no specific exceptions that allow educational institutions to copy purchased, rented or borrowed videos or DVDs for educational purposes. Educational institutions are, however, entitled to record television programs and make copies of those recordings in certain circumstances.

If the video or DVD is held in a library in the educational institution, and is lost, stolen or damaged, the library can make a replacement copy if a replacement copy is not available for purchase (see below).

In addition, an educational institution may be able to make a copy of a video or DVD for educational instruction provided:

- the circumstances of the use amount to a special case;
- the use does not conflict with a normal exploitation of the contents of the video or DVD;
- the use does not unreasonably prejudice the legitimate interests of the owner of the copyright; and
- the copying is not made for commercial advantage or profit.

For more information, see our information sheet *Educational institutions*, available from <http://www.copyright.org.au/education>.

## Copying by libraries and archives

If a video or DVD in a library or archive is lost, stolen or damaged, and a replacement copy isn't available for sale, the library may make a replacement copy (for example, from a copy held by another library).

In addition, a library or archives may be able to make a copy of a video or DVD for the purpose of maintaining or operating the library or archives provided:

- the circumstances of the use amount to a special case;
- the use does not conflict with a normal exploitation of the contents of the video or DVD;
- the use does not unreasonably prejudice the legitimate interests of the owner of the copyright; and
- the copying is not made for commercial advantage or profit.

For further information, see our information sheet *Libraries* from <http://www.copyright.org.au/libraries>.

## People with a disability

Institutions assisting people with an intellectual disability are entitled to copy videos and DVDs, and to record television programs and make copies of those recordings, in certain circumstances.

In addition, a person with a disability that affects reading, viewing or hearing may be able to make a copy of a video or DVD into a more accessible format, provided:

- the circumstances of the use amount to a special case;
- the use does not conflict with a normal exploitation of the contents of the video or DVD;
- the use does not unreasonably prejudice the legitimate interests of the owner of the copyright; and
- the copying is not made for commercial advantage or profit.

For further information, see our information sheet *People with a disability* available at <http://www.copyright.org.au/disability>.

## Copying by governments

Commonwealth, State and Territory governments (but **not** local governments) are entitled to copy any type of copyright material, including videos and DVDs, for government purposes. The government has to notify the owners of copyright, who are then entitled to negotiate payment.

For further information, see our information sheet *Governments (Commonwealth, Territory & State)* available at <http://www.copyright.org.au/government>.

## Downloading movies from the internet

Free downloads of major studio movies are likely to be infringing copies, and downloading them is likely to infringe copyright. Sites which offer legitimate downloads in Australia include BigPond and iTunes.

## Consequences of unauthorised copying or downloading

Copying or downloading protected material without permission will infringe copyright, unless a special exception applies. A person also infringes by authorising another person to copy protected material without permission.

A copyright owner who becomes aware of an infringement may take legal action, and seek orders from a court (such as compensation). People who infringe for commercial purposes (for example by selling copies) may also face criminal charges. For more information, see <http://www.copyright.org.au/permission>.

## Getting permission

In cases where permission to copy a video or DVD is needed, it is often difficult in practice to get that permission. The first point of contact is usually the relevant film studio.

## Further information

For further information about copyright, and about our other publications and training program, see our website – <http://www.copyright.org.au>.

If you meet our eligibility guidelines, a Copyright Council lawyer may be able to give you free preliminary legal advice about an issue that is not addressed in an information sheet. This service is primarily for professional creators and arts organisations but is also available to staff of educational institutions, libraries and governments. For information about the service, see <http://www.copyright.org.au/advice> or our information sheet *Australian Copyright Council: who we are, what we do*.

## Reproducing this information sheet

You may download and print one copy of this information sheet from our website for your reference, or you may purchase a printed copy from our online shop – <http://shop.copyright.org.au> – or direct from us.

## Australian Copyright Council

**The Australian Copyright Council is a non-profit organisation whose objectives are to:**

- assist creators and other copyright owners to exercise their rights effectively;
- raise awareness in the community about the importance of copyright;
- identify and research areas of copyright law which are inadequate or unfair;
- seek changes to law and practice to enhance the effectiveness and fairness of copyright;
- foster co-operation amongst bodies representing creators and owners of copyright.



Australian Government



*The Australian Copyright Council has been assisted by the Commonwealth Government through the Australia Council.*

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