

# Article for Schools Alert

## *The Digital Agenda Amendments*

Ian McDonald, Australian Copyright Council, 7 February 2001

In response to photocopying and other reprographic technology, the Copyright Act was amended in 1980 to allow schools and other educational institutions to photocopy certain amounts of material for “educational purposes”. In August 2000, Federal Parliament passed a range of amendments to the Act, in response to the development of digital technology. These amendments operate from 4 March 2001, and have important implications for schools.

The amendments are very broad. In this article we can only highlight some of the ways in which the “Digital Agenda” amendments will affect schools.

### **Amendments to the photocopying scheme**

The amendments clarify that you can digitise print material (for example, by scanning) as part of the educational copying scheme which Copyright Agency Limited (CAL) has been appointed to administer. The amount you can digitise from a hardcopy original is the same as you can photocopy.

### **Reproducing and communicating electronic text and graphics**

The amendments introduce a new scheme for reproducing electronic text and graphics, including notated music. This scheme covers, for example copying digital files, printing out, saving to disk and downloading. The amount you can reproduce from an electronic source is *similar* to what you would be used to from the photocopying scheme, but there are important differences. For example, for text, “10%” is not judged by reference to the number of pages, but by reference to the number of *words*, and for music, by reference to the *work*. There is no provision for the amount you can copy from electronic “anthologies”, and there is no need to check on commercial availability of artistic works (effectively meaning you can copy any that are in electronic form).

The new scheme also allows you to “communicate” the same amounts of electronic material for your school’s educational purposes. Examples of “communication” include emailing material to students or staff, and putting material onto the school’s Intranet or onto a secure website available only to students and staff.

There are a number of administrative steps you will have to take when relying on the new scheme for copying and communicating electronic text and graphics. You will have to make sure the material is accompanied by a notice containing specific information (what has to go into the notice will set out in regulations to the Copyright Act). In some cases (for example, if you want to put material onto your school’s website for home access), you will have to take all reasonable steps to ensure that other people cannot access it. This might involve passwords or encryption technology.

In practice, the new scheme will be difficult to apply to the Internet, and in most cases, it may be a sound policy to ask for permission if you are uncertain whether the copyright owner(s) of material on a site have given permission for the material to be used in the way you want to use it, or if you are uncertain how to apply the

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new “electronic originals scheme” to the material you find on the Net. You should note, however, that the amendments to the Act do *not* entitle a school to cache an entire web site (for example, in order to store the site on an Intranet for later reference or retrieval).

### **Amendments to the Screenrights scheme**

Amendments to the scheme in the Act which allows schools to copy from radio and TV clarify that schools may make digital copies of material they copy from radio and TV. Further, the amendments allow schools to “communicate” material copied from TV or radio (for example, by emailing such material to students, or by making the material available from an Intranet site, central server or reticulation system). We understand that many peak bodies such as Departments of Education may adopt a “wait-and-see” approach before taking the relevant administrative steps to allow their schools to “communicate” material copied from radio or TV. This is because schools or their governing bodies will have to pay for this use of material copied from radio and TV. Therefore, before “communicating” material to staff or students, contact your peak organisation to see what policy it is adopting.

### **Circumventing technological protection measures**

The amendments allow schools to access copyright material that has been protected by a “technological protection measure” (such as encryption) if they need that material for their educational purposes, and cannot get copies in any other way. School cannot, however, rely on these amendments to get unauthorised access to pay TV services such as Foxtel or Skychannel.

### **Amendments to the library provisions**

The “library-copying provisions” in the Act have also been amended in ways which will affect school libraries.

Most copying in schools is likely to take place under the schemes outline above. However, libraries in schools will also be entitled, as libraries, to make material they have acquired in digital form available on the premises (for example, subject to any contractual obligations, to make a CD-ROM available to any of the terminals in the library) and, for administrative purposes, to reproduce and communicate material to library staff. Each of these provisions, however, only applies to things that can be done within the *library* premises, and not within the school generally.

Also, there is an extension to the provision which relates to warning notices on photocopiers in libraries so that a library will not be liable for authorising an infringement by a client who uses library equipment, including computers, to infringe copyright, merely because it has the equipment on its premises. The regulations to the Act are likely to be amended soon to contain the wording that will need to be on the notices, and you should ensure that all copying equipment (such as scanners, tape decks, CD burners, and computers) have an appropriate notice on or near them.

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## Conclusion

The amendments are complex. This article touches on some of the issues, but you *will* need further information to make sure your school is fully abreast of what the Digital Agenda amendments mean in practice for schools. In some cases, your peak organisation can give further information. The Copyright Council can also help. For information on the Digital Agenda amendments as a whole, see our information sheet, entitled *Digital Agenda amendments: an overview*, which is available for free from the Council's web site at [www.copyright.org.au](http://www.copyright.org.au). In late February, the Copyright Council is publishing *Educational Institutions: Digital & AV Resources*; it will also soon be updating its practical guide *Educational Institutions: Print Resources*. During the year it is also running seminars for people in educational institutions. These seminars incorporate information on the amendments (order forms, registration details, and further information is available on its website).