



## **A GENERAL GUIDE TO CURRENT U3A COPYRIGHT LICENCES: 25/08/2020**

**Sources:** *Copyright Act 1968 (Cth) (Act)* and its Regulations. Copyright Council:  
[www.copyright.org.au/ACC/Find\\_an\\_Answer/ACC/Public\\_Content/Find\\_an\\_Answer.aspx](http://www.copyright.org.au/ACC/Find_an_Answer/ACC/Public_Content/Find_an_Answer.aspx);  
[www.screenrights.org/screen-audiences/screenrights-licences/australian-educational-licences/](http://www.screenrights.org/screen-audiences/screenrights-licences/australian-educational-licences/)  
[www.copyright.com.au](http://www.copyright.com.au), <http://apraamcos.com.au/music-customers/licence-types/>  
<http://apraamcos.com.au/music-customers/licence-types/community-band-choir-or-performance-group/> <http://www.musicrights.com.au/fact-sheets/sheetmusic/>

**CURRENT** as at 25 August 2020.

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**DISCLAIMER:** The material in this guide is of a general nature and should not be regarded as legal advice or relied on for assistance in any particular circumstance. In any important matter, you should seek appropriate independent professional advice in relation to your own circumstances.

U3A Network NSW Inc and the author accept no responsibility or liability for any damage, loss or expense incurred as a result of the reliance on information contained in this guide.

**NOTE:** the collecting agencies involved in the licencing of copyright works all have a legal Chatline where you may seek advice. Their respective websites provide a comprehensive explanation of the relevant copyright law and the nature of their respective licences. Visit:

<https://onemusic.com.au/licences/community-music-groups/>;

<https://www.copyright.com.au/licences-permission/>

**The copyright licences obtained by U3A Network NSW Inc are only of benefit to those NSW U3As as have paid to U3A Network NSW their share of the annual cost of each licence.**

## IMPORTANT CHANGES

Recent changes to the Act have involved a substantial change in the licensing regime. For example, the CAL licence is still operating under the old regime as negotiations with educational institutions is ongoing re the proposed changes.

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### A. EDUCATIONAL INSTITUTIONS

1. The *Copyright Act 1968* provides certain exemptions to educational institutions. An “educational institution” is defined in section 10 of the Act as including an institution with the principal function of providing courses of study or training for a number of specific purposes including “general education”. Whether U3As falls within the ambit of that definition is debateable.
2. Nevertheless, the following are educational institutions that are covered by the statutory licence for educational use of copyright content, through agreements with Copyright Agency, as at May 2019: U3A Network - Queensland Inc; U3A Network NSW Inc., U3A Network Victoria Inc., U3A Pine Rivers Inc., U3A Redcliffe and U3A South Australia. (static-copyright-com-au.s3.amazonaws.com/uploads/2019/05/Education-Licensing\_OEP-Licence-List\_0519-1.pdf).

### B. ENTITLEMENT TO REMUNERATION

3. Section 113N of the Act provides:
 

***An educational institution may copy or communicate certain copyright material for educational purposes if the body administering the educational institution agrees to pay equitable remuneration to a collecting society.***
4. Section 113P of the Act provides that an educational institution does not infringe copyright in a work by copying or communication the whole or a part of the work relevantly if:
  - a) A remuneration notice that applies to the educational institution and the work is in force under section 113Q; and
  - b) the copying or communicating occurs solely for the educational purposes of the educational institution; and
  - c) the amount of the work copied or communicated does not unreasonably prejudice the legitimate interests of the owner of the copyright.
5. Remuneration agreements are in place between U3A Network NSW Inc and Copyright Agency, and U3A Network NSW Inc and Screenrights.

**Note:** section 113 P of the Act provides that the relevant collecting society may, in writing (the entry notice ), notify the body administering the educational institution ( the U3A) that the society wishes, on a day specified in the notice, to enter the premises of the educational institution for the purpose of reviewing the body's compliance with the remuneration notice; and any relevant licence agreements.

#### **A. SPECIFIC EXEPTIONS RE EDUCATIONAL USE:**

6. **Section 28:** the performance in class of a work (literary, dramatic or musical) and the playing of a sound recording or a cinematographic film by a teacher in the course of giving educational instruction, not being instruction given for profit, or by a student in the course of receiving such instruction, is deemed not to be a public performance. It therefore does not infringe copyright in the literary, dramatic or musical work, the sound recording or the cinematographic film. This deeming provision only applies if the audience is limited to persons who are taking part in the instruction.
7. "Performance" now means in relation to a dramatic work or a musical work making an acoustic representation of the work or a visual representation of a dramatic action in the work: section 10 (2) of the Act.
8. **Section 200:** allows for the making of copies and the making of an adaptation of a work (literary, dramatic or musical) in the course of educational instruction by a teacher or student provided it is done by hand on a whiteboard or paper.

**Note:** this exemption does not allow for the making of a copy by hand and the photocopying of the handwritten copy!

#### **C. EDUCATIONAL PURPOSE LICENCES**

9. Two of the copyright licences acquired by U3A Network NSW Inc. allow the use of copyright materials but only in specified circumstances. Both are known as educational licences and their protection only extends to a use of copyright materials as part of a course of educational instruction. Watching a movie or listening to music simply for pleasure does not fall into the category of doing an act protected by copyright in connection with a course of instruction.

#### **D. OPERATION OF STATUTORY LICENCES FOR EDUCATION**

10. In 2017, amendments were made to the Copyright Act which covered five key areas. For the purposes of U3As the relevant change is concerned with the Part VA and Part VB statutory licences for educational purposes. The existing arrangements will continue to operate until the new arrangements have been negotiated between the relevant collecting agencies and

educational institutions. Accordingly, the blanket licences obtained by U3A Network NSW Inc. continue to operate in the immediate future.

#### **E. THE COPYRIGHT AGENCY & SCREENRIGHTS LICENCES/ Result of the 2017 Amendments In 2017.**

11. The Part VA (TV and radio broadcasts) and Part VB (text and images) statutory licences have been replaced with a single simplified statutory licence covering broadcasts, text and images. Under the old licences, the Act included restrictions and conditions on using copyright material for educational purposes. The new statutory licence does not specify any restrictions or conditions. Instead, any restrictions and conditions of the new licence will be negotiated between educational institutions and Screenrights and Copyright Agency Those negotiations are ongoing.

#### **F. WHAT DO THE EDUCATION LICENCES CURRENTLY COVER?**

##### **12. CAL (Copyright Agency Limited): 2010 Licence No. 5633**

The Education Copyright Licence allows all tutors to copy and communicate certain copyright works (text and images) for educational purposes, from any source, including the internet, from anywhere in the world, without having to seek permission prior to use.

See: <https://www.copyright.com.au/licences-permission/educational-licences/copying-under-education-licence/>

13. Uses allowed by the statutory licence include:

- hardcopy content: photocopying, scanning
- digital content: saving to disk, printing, making available online, emailing

14. A ‘work’ is an item of text or an image, usually created by a single ‘author’. An ‘edition’ (such as a book, journal or newspaper), or a publishing platform such as a website or CD ROM, may contain many ‘works’. For example, in a newspaper, each article, opinion piece, letter to the editor, cartoon and photograph is a separate ‘work’.

15. In some cases, a teacher may use only a ‘reasonable portion’ of a work, not the entire work. For some content, a specified proportion is deemed to be a ‘reasonable portion’. More than this specified proportion can be a ‘reasonable portion’, but there is no guidance in the legislation about how much. Similarly, there is no guidance on what constitutes a ‘reasonable portion’ of works such as artistic works.

16. The following is a guide.

	<b>entire work</b>	<b>deemed “reasonable portion”</b>
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<p><b>hardcopy</b></p>	<p>If:</p> <ul style="list-style-type: none"> <li>• unpublished</li> <li>• published, but not separately</li> <li>• not available (in any form) within a reasonable time at an ordinary commercial price</li> <li>• an article in a periodical (such as a journal, newspaper or magazine) – more than one if they are on the same subject</li> <li>• a text work of no more than 15 pages published in an anthology</li> <li>• an image that accompanies (and explains or illustrates) text that can be copied under the Part VB educational statutory licence.</li> </ul> <p>Otherwise, a 'reasonable portion'.</p>	<p>If work published as an edition of 10 or more pages:</p> <ul style="list-style-type: none"> <li>• 10% of the number of pages, or</li> <li>• a chapter (if more than 10% of the pages)</li> </ul>
<p><b>digital</b></p>	<ul style="list-style-type: none"> <li>• if one of hardcopy criteria applies</li> <li>• work available for purchase, but only in hardcopy</li> <li>• work is an image (even if it is available for purchase in digital form)</li> </ul> <p>Otherwise, a 'reasonable portion'.</p>	<p>If work published:</p> <ul style="list-style-type: none"> <li>• 10% of the words</li> <li>• a chapter (if more than 10% of the words)</li> <li>• 10% of a musical work</li> </ul>

17. There is a general understanding that a student in a course should receive no more than a 'reasonable portion' for that course. For example, a history teacher who copies 10% of a commercially available book for a class should not copy another 10% of the book for the same class.
18. **Screenrights (Audio-Visual Copyright Agency Ltd): 2010 Licence dated 15th June 2010.**  
Screenrights licences educational institutions in Australia and New Zealand, enabling them to copy broadcast material (TV and radio), and put these copies on internal networks or email them to staff and students.
19. The 2017 amendments to the Copyright Act clarified the statutory licence for broadcasts, making it clear that it covers both traditional broadcasts and online broadcasts.
20. Under this statutory licence regime, educational institutions can both copy and communicate online the following:
- a) Any material broadcast on Australian TV;
  - b) Any material broadcast on Australian radio; and
  - c) Broadcast content made available online by the broadcaster (such as a podcast of a documentary screened on the ABC).
- Note:** The statutory licence does not cover material from online streaming platforms (eg. Netflix) unless the online streaming platform is that of a broadcaster (eg. ABC iview).
21. Activities covered by this licence would include the copying and making available of a television show on an institution's intranet system so that students can access it for research, and the recording into an MP3 file of some music broadcast on a radio show for study in a music class.
22. So what can NSW U3As copy? The Screenrights licence allows for the following copying:
- a) Any program – including movies, current affairs, documentaries, news.
  - b) Any amount – copy five minutes or an entire drama, make one copy or 20, it's up to you.
  - c) Anywhere – make copies at home or in your library.
  - d) From any channel – copy from free to air TV, pay TV or radio.
  - e) From free to air broadcasters' websites or the broadcasters' official YouTube channels – copy broadcast material made available online by the broadcaster including podcasts and vodcasts or catchup TV.

- f) From online simulcasts of broadcasts – including online radio.
- g) In any format – copy or download and store digital copies on a hard drive or other devices.
- h) From old copies – update your DVD (or VHS) copies by putting them in digital format.

23. U3As may make the following uses of their copies:

- a) Show them in U3A class.
- b) Keep them in the U3A library as an ongoing resource.
- c) Store them on a network for U3A tutors and U3A students.
- d) Email them to U3A tutors and U3A students.
- e) Show them on an electronic whiteboard.

**Remember** that these rights must only be exercised for educational purposes.

24. Screenrights licenses third parties to make the copies for you, and to stream them to you. Services are available from Clickview, TV4Education, InfoRMIT and Screenrights' own service, EnhanceTV.

25. Screenrights also provides a website that includes free educational resources for audio-visual material at [www.enhancetv.com.au](http://www.enhancetv.com.au). The main features of the site include free downloadable teachers/tutors notes for documentaries and feature films, and an educational IV email guide to which teachers/tutors can subscribe (free of cost).

**Note:** the licenced educational institution is U3A Network NSW Inc, not your home U3A.

## **G. MUSIC LICENCES**

26. You do not need permission to play music in a private situation. However, if you are playing music in public you will need permission from the owners of copyright in the music, lyrics and sound recording:

See: details of section 28 exemption re performance of music and playing of sound recordings in class for educational purposes. See also: Copyright Council explanation at:

<https://www.copyright.org.au/> and search **Music Choirs, Orchestras, Ensembles & Private Music Teachers** to access the current advice.

### ***What is a “public performance”?***

27. Any performance of copyright material which is not essentially private or domestic is likely to be regarded as “in public” for the purposes of copyright.

***What is “communication to the public”?***

28. A “communication to the public” means communicating copyright material electronically to the public. This includes online uses of copyright material – for example, uploading music to the internet, streaming music and emailing files (except to family and friends) – and broadcasting copyright material.

***Four Licensing Agencies***

29. There are 4 organisations that licence the use of music because a recorded song is made up of different parts which need licences for each use. They are:

- a) PPCA licence allows for **the public performance of a sound recording, eg.** playing a sound recording in public.
- b) ARIA licences certain types of the **reproduction (copying)** of the sound recording: a licence is required if you reproduce/copy sound recordings for certain purposes.
- c) APRA licences the public performance of musical works (the lyrics, the composition).
- d) AMCOS collects the mechanical royalty for musical works (eg, copies onto a CD, DVD or online, lyrics and music reproduced as sheet music).\

***WHEN DO YOU NEED AN APRA/AMCOS LICENCE?***

30. If your U3A provides music to the public including in any of the following ways:

- a) live performances;
- b) playing music CDs (or music in other formats including by means of digital services);
- c) playing the radio or a television;
- d) playing music as part of a telephone “on hold” system;
- e) playing music as part of training sessions, or presentations; and
- f) playing music via your website;

then you will need a licence from APRA covering the musical works and lyrics.

<http://apraamcos.com.au/music-customers/licence-types/community-band-choir-or-performance-group/>

***ONEMUSIC LICENCE***

31. APRA/AMCOS licences schools, universities and registered colleges by means of blanket licences. They are not available to U3A or any other educational institution that does not fall into any of those 3 categories. That issue is the subject of discussion.

32. APRA/AMCOS is offering U3A’s which are part of U3A Network NSW a ONEMUSIC licence which is significantly more comprehensive than the previous “Community Band, Choir or Performance Group Licence” which only allowed for the holding of free events or rehearsals where copyright music is performed. That licence expired on 31 December 2019.

33. If your U3A does not take up the new ONEMUSIC licence, it will not be able to, inter alia, organise free public events that include the playing/performance of copyright music by U3A members. A licence would need to be obtained for each such event at a minimal cost of \$82.50 (see <https://onemusic.com.au/media/Information-Sheets/Events.pdf>). For details of the ONEMUSIC Licence go to <https://onemusic.com.au/media/Information-Sheets/Community-Music-Groups.pdf>

**Term of Copyright: Music/ APRA & AMCOS**

34. The licence is relevant only to music still in copyright and controlled by APRA & AMCOS. It will be apparent from what follows that a substantial amount of music will remain in copyright for many years to come.
35. Copyright subsists in a piece of music for the life of the author plus 70 years. Applies to works in which copyright subsisted as at 1 January 2005: s. 211, *US Free Trade Agreement Implementation Act 2004 (Cth)*.
36. Since 2005, the law has provided that if the creator died before 1 January 1955, and the work was published before January 1955, then copyright has already expired. This is because the previous rule was that copyright lasted for the life of the creator plus 50 years, and the 2005 changes to duration did not restore copyright to materials that were already out of copyright by that date.
37. Deciding whether a piece of music is still in copyright or not may well be difficult. It involves:
- a) Identifying the person who wrote the piece of music (may be different to the owner of the copyright in the work);
  - b) Determining if the writer of the piece of music has died, and if he/she has, the date of his/her death.
  - c) If the writer of the music died prior to 1 January 1955, determine whether the piece of music was published prior to 1 January 1955. If it was, the piece of music is out of copyright.
  - d) If the writer of the piece of musical died after 1 January 1955, then copyright continues for 70 years from that date.
  - e) If the writer of the piece of music is still alive, copyright will protect his works for the term of his life plus 70 years.

**ONEMUSIC? Nature of 2 Licences on Offer**

38. The ONEMUSIC licence being offered to U3As comprises 2 types of licences. They are:
- a) PPC Sound Recording Licence at a cost of A \$139.51 (including GST) per Community Music Group. This licence allows for the playing of PPCA Sound Recordings (as defined).

- b) APRA & AMCOS WORKS Licence at a cost of \$\$290 (including GST). Of particular relevance is the inclusion of a licence to copy print sheet music of copyright works provided the original is owned by your U3A. It does not allow for the making of arrangements.
39. Please read the ONEMUSIC documentation carefully in order to identify which of these 2 licences your U3A needs. That need will be determined by the use made of copyright music by your members.
40. Enquiries re the proposed licences should be directed to APRA/AMCOS, Phone: 1800 642 634. Neither your Regional Representative nor any member of the Management Committee has been authorized by the Network to comment/advise on the subject matter of the proposed licences or your U3As need or otherwise for either licence.
41. Once you have made that decision please complete the application form and send it to the Networks Treasurer.
42. **Warning:** if your U3A does not propose to acquire an APRA & AMCOS Works licence but has tutors who teach music or an instrument or who conduct band/choirs etc your U3A must ensure that the individual tutor has acquired the requisite licence from APRA/AMCOS. You should ask to be provide with a copy for your records. See GUIDE TO MUSIC COPYRIGHT FOR AUSTRALIAN EDUCATORS: [http://apraamcos.com.au/media/6289/ampal-guide-to-print-music\\_final.pdf](http://apraamcos.com.au/media/6289/ampal-guide-to-print-music_final.pdf)
43. **Performances not covered by any APRA/AMCOS licence (Musicals etc)**  
 Certain public performances of music are not generally covered by the APRA licence. These include “grand rights” (the performance of entire dramatic and musical works such as operas, musicals or large choral works) and also the use of musical works in dramatic presentations and ballets. Permission to perform musicals, operas, and other “grand rights” works which are still protected by copyright is usually sought from the relevant music publisher.  
 If you want to use music in a theatrical context (for example, as background music during a play) contact APRA for initial information. T +02 9101 2377.  
[http://apraamcos.com.au/media/6289/ampal-guide-to-print-music\\_final.pdf](http://apraamcos.com.au/media/6289/ampal-guide-to-print-music_final.pdf).

#### **PRINT SHEET MUSIC LICENCE/APRA & AMCOS**

44. The ONEMUSIC licence now includes a licence allowing for the copying by U3As of print sheet music where the music is still in copyright. It forms part of the APRA Works/AMCOS Works Licence. An essential requirement of that licence is that the U3A must own the original print sheet music!
45. **Note:** there is no exemption for teachers or educational institutions. Schools, Universities and Registered Colleges have all entered into an AMCOS Licence to allow them to make multiples

copies of whole print musical works for educational purposes. U3As must enter into their own APRA/AMCOS ONEMUSIC LICENCE!

46. MUSIC RIGHTS AUSTRALIA provides a useful explanation as regards the law relating to the copying of print music: <http://www.musicrights.com.au/fact-sheets/sheetmusic/>. Also keep in mind the s. 200 exemption re the making of copies by hand of a musical work: see para 6 above.

### ***PRINT SHEET MUSIC WHERE MUSIC IS OUT OF COPYRIGHT***

47. Even though the music featured in a piece of print sheet music is out of copyright that does not mean that the copyright in the print sheet music itself has also expired. The unauthorized copying of the print sheet music in those circumstances still involves an act of copyright infringement.
48. As stated by APRA/AMCOS: *To go one step further however, you also need to make sure that the published edition containing the musical work (i.e. the printed sheet music) is also out of copyright in order to copy it without permission. This is because published editions are protected by their own copyright duration of 25 years from the end of the year in which they're published. Someone has taken the time to design, lay-out and typeset that score, so their work needs to be protected too, not just the musical work itself.*
49. This means that even though the musical work – say a Bach Chorale – is in the public domain, the published edition containing that work may still be protected by its own 25 years copyright duration.
50. So check the copyright notice on the print sheet music!!

### ***WHEN DO YOU NEED A PPCA LICENCE?***

51. If you play recorded music (such as CDs) in public (non-private/non-domestic), you need a licence from PPCA as well as from APRA. **Note** section 28 exemption at paragraph 6 above.
- Example:** A U3A band performs John Williamson music at a free music event with a CD of the album as a backing track to give a more impactful performance. The U3A to which the band belongs must have two licences:
- a) Live performances of APRA Works (music) such as the “Community Band, Choir or Performance Group Licence” current valid until 31 December 2019. Under the new ONEMUSIC LICENCE currently offered by APRA/AMCOS that aspect will be covered by the APRA Works & AMCOS Works part of that licence.
  - b) Live performances of PPCA Sound Recordings (the CD). The Network does not currently hold such a licence. This will be covered in future by the PPCA Sound Recordings Licence that forms part of the ONEMUSIC Licence.

**Note:** even though the music is out of copyright (eg. works by Bach) it is more than likely that the copyright in the sound recording is still in copyright. In that case you will need a PPCA licence to play the music (sound recording) in public.

## 52. WHEN DOES A U3A NOT NEED A PPCA LICENCE: REGISTERED CHARITY EXEMPTION.

If your U3A is registered as a charity under the *Australian Charities and Not-for-profits Commission Act 2012*, section 106 of the Act provides an exemption. It relevantly provides: *COPYRIGHT ACT 1968 - SECT 106*

*(1) Where a sound recording is caused to be heard in public:*

*(a)....; or*

***(b) as part of the activities of, or for the benefit of, a registered charity;***

*the act of causing the recording to be so heard does not constitute an infringement of the copyright in the recording.*

*(2) The last preceding subsection does not apply:*

*(a) ; or*

***(b) in relation to a registered charity of a kind referred to in paragraph (b) of that subsection, if a charge is made for admission to the place where the recording is to be heard and any of the proceeds of the charge are applied otherwise than for the purposes of the registered charity .***

*(3) A reference in the last preceding subsection to a specific charge, or a charge, made for admission includes a reference to a specific charge, or a charge, made partly for admission and partly for other purposes.*

53. For the Charity exemption to apply, the following criteria must be met:

- a) The U3A must be a registered charity;
- b) The sound recording must be played in public (in a non-domestic/non-private context) by the U3A's music group; and
- c) The activity referred to in b) must be a ***part of the activities of, or for the benefit of, the U3A.***

**NOTE:** the exemption will not apply if a charge is made for admission to the place where the sound recording is to be heard and any of the proceeds of the charge will be applied otherwise than for the purposes of the U3A.

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