



## Copying without the copyright owner's permission: key exceptions in the *Copyright Act*

The *Commonwealth Copyright Act 1968* contains many exceptions to infringement, and this table identifies some that are particularly relevant to activities of library patrons (column 1). If one of these exceptions applies to your proposed use, you can undertake that use without seeking the permission of the copyright owner. You must keep your activity within the scope of the exception. For example, exceptions are often limited by the type of material to which they apply (column 2) and have other requirements that you must follow (column 3). Under some exceptions, the collection item must be copied by the Library on your behalf – you cannot copy it yourself (column 4). In some cases, more than one exception may apply to the same conduct.

While some exceptions are defined using very specific language, others are written more broadly – in particular, fair dealing. If you have any questions about whether your proposed use falls within an exception, it may be wise to seek legal advice.

Even if copying falls under an exception, you may need to obtain the Library's permission to make or obtain a copy of certain items. This may be due to preservation concerns, donor conditions or concerns about private or sensitive information. Similarly, for fragile items, the Library may insist on assisting you with copying or making any reproductions on your behalf.

Exception	Material covered by exceptions	Application of exception	Who can undertake the copying
Purpose of use: research or study			
Fair dealing generally: sections 40 & 103C	Works (literary, dramatic, musical & artistic works) & audio-visual items (sound recordings, films & broadcasts)	The dealing must be for research or study purposes <b>and</b> be fair.  Relevant factors in determining whether the act is a fair dealing include: <ul style="list-style-type: none"> <li>the purpose and character of the dealing</li> <li>the nature of the work being dealt with</li> <li>whether that work is commercially available</li> <li>the market effect of your dealing</li> <li>the importance and amount of the part copied</li> </ul> Some specific dealings are taken to be fair dealings, and you do not need to apply these factors – see next row.	The patron*
Fair dealing: deemed fair dealings under subsections 40(3)–(7).	Articles in periodical publications & published works	<i>Articles</i> : the reproduction of all or part of an article from a periodical publication is taken to be a fair dealing. This exception does not apply if another article in the publication is also reproduced for the purpose of different research or study.  <i>Published editions</i> : it is a fair dealing to reproduce up to a 'reasonable portion', which is defined as: <ul style="list-style-type: none"> <li>For a literary, dramatic or musical work published in hard copy form: 10% of the number of pages in the edition <b>or</b> a single chapter</li> <li>For a literary or dramatic work published in electronic form (but not a computer program or an electronic compilation): 10% of the number of words <b>or</b> a single chapter</li> </ul> If you subsequently want to make a further reproduction from the same published work, you cannot invoke this exception again.	The patron*
Sections 49 & 50	Articles in periodical publications & published works	This exception allows the Library to reproduce articles and published works on the request of patrons. <ul style="list-style-type: none"> <li>You must follow the procedures for making the request. A signed declaration may be required.</li> <li>The Library will assess your request by reference to the requirements in the <i>Copyright Act</i>, and let you know whether they are satisfied.</li> </ul>	The Library

Exception	Material covered by exceptions	Application of exception	Who can undertake the copying
Subsection 51(1) & section 110A	Unpublished works, sound recordings & films	The exception only applies to material: <ul style="list-style-type: none"> <li>• that has not been published;</li> <li>• that is kept in a collection that is open for public viewing or listening; and</li> <li>• at least 50 years has passed since the time the author died (for works) or the recording or film was made (for sound recordings and films).</li> </ul>	The patron or the Library
Subsection 51(2)	Unpublished theses & similar works	You must satisfy the Library that you require the reproduction for the purposes of research or study.	The Library
Purpose of use: criticism or review			
Fair dealing: section 41	Works (literary, dramatic, musical & artistic works)	The dealing must be for criticism or review purposes <b>and</b> be fair. In addition: <ul style="list-style-type: none"> <li>• The criticism or review must be of that work or another work.</li> <li>• You must include an acknowledgement of the work: the title or a description of the work should be given and (unless the work is anonymous, pseudonymous, or the author has directed that his or her name should not be used) the author should be identified.</li> </ul>	The patron*
Fair dealing: section 103A	Audio-visual items (sound recordings, films & broadcasts)	The dealing must be for criticism or review purposes <b>and</b> be fair. In addition: <ul style="list-style-type: none"> <li>• The criticism or review must be of that audio-visual item, or another work or audio-visual item.</li> <li>• You must include a sufficient acknowledgement of the audio-visual item.</li> </ul>	The patron*
Purpose of use: parody or satire			
Fair dealing: sections 41A & 103AA	Works (literary, dramatic, musical & artistic works) & audio-visual items (sound recordings, films & broadcasts)	The dealing must be for the purpose of parody or satire <b>and</b> be fair.	The patron*
Purpose of use: news reporting			
Fair dealing: sections 42 & 103B	Works (literary, dramatic, musical & artistic works) & audio-visual items (sound recordings, films & broadcasts)	The dealing must be fair <b>and</b> for the purpose of, or associated with, reporting the news in: <ul style="list-style-type: none"> <li>• a newspaper, magazine or similar periodical; or</li> <li>• a communication or in a film.</li> </ul> If the news is reported in a newspaper or magazine or similar, a sufficient acknowledgement must be made.	The patron*
Purpose of use: judicial proceedings or professional advice			
Fair dealing: sections 43 and 104	Works (literary, dramatic, musical & artistic works) & audio-visual items (sound recordings, films & broadcasts).	The dealing must be fair <b>and</b> for the purpose of giving professional advice by a lawyer, patent attorney or trademarks attorney.	The patron or the Library.
Purpose of use: publication			
Sections 51, 52 & 110A	Unpublished works to which section 51(1) applies	The procedures in sections 51 and 110A can also be used where the patron requires the reproduction with a view to publication.  There are procedures in section 52 that allow material reproduced under subsection 51(1) to be published in a new work without the permission of the copyright owner – but these must be strictly followed.	The patron or the Library
Activities not covered by other exceptions			
Section 200AB	All copyright works	Section 200AB applies to uses performed for the purposes of maintaining and operating the Library. This may include services provided to patrons.  Any reliance on section 200AB will be assessed by, and will be at the discretion of, the Library.	The Library

\* There is uncertainty in Australia regarding whether the Library can copy on the patron's behalf under fair dealing.