



## INFORMATION SHEET

G097v01

# “Private use” copying: time-, format- & space-shifting

February 2008

In this information sheet, we give an overview of copyright law as it applies to people who want to copy text, photos, sound recordings and videos they own, or who want to copy from radio or TV.

Check our website at <http://www.copyright.org.au/permission> to make sure this is the most recent version, and for information about other information sheets, other publications and our training program.

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

### Key points

- Until 11 December 2006, there were no exceptions in the Copyright Act allowing people to copy or scan copyright material for “private and domestic use” and no exceptions that effectively allowed people to record from radio or TV so they could catch up with a program later.
- On 11 December 2006, a set of new exceptions in the Act came into operation. These allow individuals to copy a range of types of copyright material they own for their “private and domestic use”, and to record from radio and TV.
- The exceptions vary according to the type of material – what you can do under the provisions with a book you own, for example, is different from what you can do with one of your CDs or videos.
- The provisions don’t apply to every type of copyright material – for example, none of the “private use” provisions deal with copying DVDs or sheet music.
- In some cases, an agreement with the copyright owner or supplier of the material may limit your ability to rely on the private copying provisions.

### What can you do under the “private use” provisions?

The “private use” provisions allow you to:

- time-shift from radio and TV (that is, record something to listen to or view at a later time);
- format-shift books, newspapers, periodical publications and photos you own (that is, make one copy in a different format, such as making a digital copy of a paperback you own); and
- space-shift sound recordings (that is, copy sound recordings into any format – including MP3 – so you can listen to the recording in different places – for example, copying a CD so you can have a copy to listen to in your car and another to listen to on your computer at home).

A private use copy can be used inside or outside domestic premises, but only for the **private and domestic purposes** of the person entitled to make the copy and of members of his or her family or household.

## Time-shifting from radio & TV

You can copy from radio and TV, including from cable and satellite TV stations. However, note that you can only rely on the provisions if you have legitimately accessed the service – you cannot rely on the provisions if you have hacked into a pay-TV station.

Also, you cannot rely on the provisions to copy from the internet (for example, webcasts, podcasts or vodcasts) unless what you are copying is being streamed by a radio or TV station. If you want to copy something from a website, the first place to look is on the site itself to see whether it allows you to copy or download (see our information sheet *Internet: copying and downloading*).

You can copy from radio or TV into any format, provided you are just doing so in order to listen to or watch what you’ve copied at “a time more convenient” than when the material is broadcast. For example, you can record a late night TV program to watch on the weekend, or something you’re going to miss because you won’t be home at the scheduled broadcast time.

The government’s intention in enacting the provision was not to enable people to copy from TV to add to their personal library collections of movies or programs, and you certainly should not upload what you copy under the provision onto the internet.

The copy you make 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, email copies to people);
- cause it to be heard in public; or
- broadcast it.

Further information on copying from TV and radio is set out in our information sheet *TV & radio: home taping*.

## Format-shifting items you own

You can copy the following items into different formats, provided you are making the copy from a non-infringing copy that you own:

- books (including novels, children’s books, reference books);
- newspapers and other periodical publications (such as magazines and journals);
- photographs; and
- films on videotape (that is, **not** DVDs).

You can copy as much or as little as you want from any of the above items, but in each case the material you want to copy must be non-infringing and in or on an item you own. This means you cannot, for example, rely on the provisions to copy a video owned by a friend or items borrowed from a library. It also means that you cannot copy from pirated videos you have bought or were given.

There are a couple of points to note:

- the copy you make must be in a **different format** to the original;
- you may only make **one** private use copy into any **one** different format.

For example, you can digitally scan a hardcopy book to make one copy in, say, pdf format, but you cannot just photocopy a book, as this would be making a copy in the same format. Similarly, you could rely on the provision to print out a newsletter you have received as an attachment to an email, but you could not rely on the personal use provision to simply duplicate the digital file.

Note that you must delete any temporary reproductions that you incidentally make as part of the technical process of format-shifting; otherwise the temporary reproductions will be infringing copies. For example, if you scan a photograph onto your computer in order to store and view it on a portable device, you must delete the copy on your computer.

You can keep (and continue to use) the **original** item – for example, the book or video that you have format-shifted – but if you dispose of this to anyone else, any private use copy you’ve made will become an infringing copy. In other words, you can’t sell or give away the original item just because you no longer want or need it.

Lastly, any **copy** you make will become an infringing copy if you:

- sell it or offer it for sale;
- rent it or offer it for rent; or
- distribute it (for example, give it away to someone).

The government is reviewing the provisions for photographs and videotapes – this review is to be completed by 31 March 2008. See <http://www.copyright.org.au/news/newsbytopic/u28086> for more information.

For further information on format-shifting, see our information sheets *Copying photographs you have paid for* and *Videos & DVDs: copying & downloading*.

## Space shifting sound recordings

The requirements and limitations for format shifting apply in the same way to space-shifting of sound recordings, except that sound recordings you own can be copied multiple times into any format for private use on devices you own.

Note, however, that the space-shifting provisions for sound recordings **don’t** apply to downloads of radio programs from the internet.

As with the format-shifting provisions, you cannot sell, rent or distribute “for the purpose of trade or otherwise” any copies you’ve made **or** the original recording from which you’ve made copies. Also, you can’t subsequently play the original recording or any copies “in public” (for example, as background music in a shop) or broadcast it.

You can, however, lend copies you’ve made under the provision to members of your family or household.

For further information on copying sound recordings, see our information sheet *Music: copying MP3s, CDs, cassettes & records*.

## What *cannot* be copied under the private use provisions?

### Infringing copies

You cannot rely on the private use provisions to copy something you own if that item is an infringing copy.

Note that this would include copies of videos you made from TV prior to the amendments in December 2006.

### Material accessed or acquired subject to conditions

If you have acquired a digital version of something under a subscription agreement or as a digital purchase, the first place you should look in working out whether or not you can make a copy will not usually be private use provisions in the Copyright Act, but the terms and conditions of the subscription or purchase agreement.

Depending on the way these terms or conditions apply to your situation, such terms or conditions may specifically state that you can make copies. If that’s the case, you don’t need to apply the private use provisions in the Act; instead you can rely on the licence from the copyright owner.

In some cases, however, terms and conditions in agreements may effectively stop you relying on the private use provisions in the Copyright Act, either because they impose a contractually binding condition on you not to make copies, or they are expressed in such a way that you do not “own” the copy of the material, but just have the right to use it.

## Some common questions

### Can I copy something someone else owns for my private use?

If you are a family or household member of someone who owns material that you wish to borrow, that person can lend you their private use copy. Neither you nor they, however, can copy the material for you to keep, and the personal use provisions don’t allow you to copy items you’ve borrowed.

## Can someone else copy my material for my private use?

Under the private use copying exceptions, you can make a copy of material that you own, but you cannot get someone else to copy it for you.

## Once I've copied something under the private use provisions, can I give away or sell the originals I don't need any more?

No. Copies made under any of the format- or space-shifting provisions will become infringing copies if you sell or "distribute" either the copies or the original items. This is especially clear for books, newspapers and other periodicals, as well as for photos and videos, where the relevant provisions state that the copies may become infringing copies "if the owner of the original ... disposes of it to another person".

You can, however, lend copies you've made to members of your family and to people who are living with you.

## Can I circumvent passwords and other technological restrictions to make a private use copy?

Technological protection measures (TPMs) are copy controls and access controls used to restrict uses of digital material. You can circumvent a "copy control TPM", but not an "access control TPM", to time-shift, format-shift, or space-shift. However, there are restrictions on dealing in circumvention devices and providing circumvention services.

## 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*.

Information from the Arts Law Centre of Australia may also be of interest to you: see <http://www.artslaw.com.au> or telephone (02) 9356 2566.

## 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, its arts funding and advisory body.*

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