Copyright Compliance Policy

Section 1 - Audience

(1) This policy applies to all staff and students of the University of Newcastle (the University) and its controlled entities.

Section 2 - Executive Summary

(2) The University encourages and supports the legal use of third-party copyright content, either in digital or print format, to enhance its educational, research and community activities.

(3) The University is committed to compliance with the following legislation:

a. Copyright Act 1968 (the Act);
b. Copyright Regulations 2017 (the Regulations);
c. Copyright Amendment (Digital Agenda) Act 2000;
d. Copyright Amendment (Disability Access and Other Measures) Act 2017;
e. Copyright Amendment (Online Infringement) Act 2018; and
f. Copyright Amendment (Service Providers) Act 2018.

(4) The University respects the rights of copyright holders under law. Copyright compliance is the responsibility of the institution and of every individual staff member or student.

(5) All use, reproduction, and distribution of copyright material at the University is required to comply with the provisions of the Act, the Regulations, and any relevant licensing agreements currently in force.

(6) The University requires staff and students to be familiar with their copyright obligations for compliance reasons.

Section 3 - Purpose

(7) This policy outlines staff and student rights and responsibilities under the Act and the licensing agreements that are in place for the University.

(8) Detailed information about the application of copyright and the use of copyrighted works is available on the Library Copyright website. Staff and students should access this information when making use of copyright materials.

Section 4 - Scope

(9) This policy applies to all material protected by the Act, including but not limited to:

a. literary works;
b. dramatic works;

c. video and film;
d. computer programs;
e. musical works (including scores and sound recordings);
f. artistic works;
g. compilations;
h. digital material; and
i. material published on the Internet.

(10) This Policy does not cover copyright ownership of materials generated by University employees, or by students in the course of their employment and studies. This ownership is outlined in the University's Intellectual Property Policy.

Section 5 - Definitions

(11) In the context of this document the following definitions apply:

a. "Statutory Licence" means the licence under the Act granting broad rights to educational institutions to use copyright material in ways that would usually require permission, provided that fair compensation is paid to the creators (or owners) of the content;
b. "Third-party copyright" means work created by another person or organisation and used in a different work, publication, course, or communication. Use of these works requires permission unless the work is:
    i. covered by a copyright exception;
    ii. under licence to the University for that purpose;
    iii. distributed under a Creative Commons (or similar open or 'free') licence; or
    iv. out of copyright.
c. "Open Educational Resources" or "OER" means learning resources that can be available in many forms, including text, artistic, and audio-visual materials, that:
    i. are published under a Creative Commons (or similar open) licence that allows for reuse, retention, redistribution, and revising and remixing (adaptation) with minimal risk of copyright infringement;
    ii. can be used in combination with statutory-licensed content for award courses at the University;
    iii. can be used in non-award courses such as open, short or certificate courses and micro-credentials; or
    iv. can be used with digital platforms and other services that are publicly available or accessible.
d. "Public domain" – not to be confused with materials that are publicly accessible, this designation applies to works where there is no copyright protection. This can be for varied reasons, including where:
    i. the copyright has expired due to age or formalities;
    ii. copyright doesn't apply due to form or function; or
    iii. the creator has dedicated the work to the public domain (given up their copyright). Unless a work is clearly marked as being public domain and free of copyright, it should be assumed that it is still in copyright. True public domain works can be used and adapted with or without attribution.

Section 6 - Principles

(12) Staff and students may be both creators and consumers of copyright, and as such have certain rights and responsibilities. The University will support staff and students with understanding copyright, and its opportunities and obligations.

(13) The University is committed to ensuring that its rights as an owner of copyright are appropriately protected and

managed. The University reserves the right to place restrictions on the reproduction, reuse, transmission and/or other communication of University-owned copyright material, including limiting its use to University-approved platforms. Staff and students must take all reasonable steps to ensure they do not knowingly infringe University-owned copyright.

(14) The University is further committed to ensuring that the rights of other (third-party) copyright owners are not infringed. Staff and students must take all reasonable steps to ensure their activities comply with copyright legislation and licensing and must not knowingly expose the University to the risk of copyright infringement.

(15) The University is committed to the creation and use of open research and education via open licensing, in line with the University's Open Access Policy and Intellectual Property Policy.

Statutory, Voluntary and Open Licenses

(16) The University is licensed via a statutory licensing scheme in Division 4 of Part IVA of the Act to use copyright material for educational purposes, and is party to remuneration agreements with the collection societies the Copyright Agency and the Audio-Visual Copyright Society Limited, trading as Screenrights. Fees from the statutory licence are subsequently disbursed to copyright owners. Use of material under this licence is subject to certain requirements, including limits to amounts reproduced, labelling, sampling, and other conditions.

(17) To enable the use of third-party copyright works and platforms the University has entered into a number of voluntary licenses with copyright owners, including a collective remuneration agreement (Tertiary Music Agreement) with the music collecting societies APRA AMCOS, Phonographic Performance Company of Australia Ltd (PPCA), and the Australian Recording Industry Association (ARIA). The varied voluntary licences may also be subject to attribution, limitations on use, and other conditions.

(18) To support open scholarship and the adoption of open materials the University engages with and supports open licensing such as Creative Commons and open-source software licences.

(19) Staff are required to comply with the requirements and conditions of all statutory, voluntary, and open licences which govern access to, and the use of, copyright material. Copyright guidance on the Library Copyright website should be accessed for further information around these requirements and conditions.

Copying and Communication of Copyright Material

(20) Copyright can be complex, and it carries associated risk. University staff and students are required to ensure that the risk of copyright infringement is minimised by:

a. limiting any copying or use of copyright material to the amounts indicated under the exceptions in the Act;
b. only using University equipment, facilities, digital platforms, and services in ways that do not infringe or increase the risk of copyright infringement;
c. not posting, hosting, or storing University materials, and/or third-party copyright content licensed for the University, on unauthorised external digital platforms, sites, or services such as social media;
d. acting on the University's advice to minimise the risk of copyright infringement; and
e. respecting the moral rights of creators and appropriately attributing sources of material (see Clause 36).

(21) The statutory licence in the Act enables the copying and communication of copyright works (text, images, and broadcasts) by the University. Under this section of the Act:

a. the copying or communication must be for educational purposes of the institution;
b. the amount of a work copied or communicated must not unreasonably prejudice the legitimate interests of the copyright owner; and

c. the copying and communication must comply with any agreements between the relevant works collection society and the University.

(22) Under the requirements of the Act, the University administers online communications of copyright material via the Course Readings system, managed by the Library. All copyright material (excluding images and broadcasts) copied in reliance on the statutory licence and communicated online under Section 113P of the Act (S113P), must be placed in the University's Course Readings system.

(23) Staff are not permitted to make copyright material directly available to students online via any other system, including a Learning Management System, subject to any exclusions noted in this Policy. However, links can be made to material, including that in Course Readings, where accessible. Material hosted in the online Course Readings system is only available to enrolled students of the University and accessible by staff associated with delivering courses or their support. Students are required to authenticate via a username and password to gain access to the material. Further information on Course Readings is available at Library – Course Readings and Library – Copyright for Teaching.

(24) Images and broadcasts used for educational purposes in compliance with S113P may only be included in Learning Management System modules and/or content where access is restricted to students and staff of the University and the required notices are displayed (see Clause 27).

(25) Application of Section 200AB of the Act (S200AB), often referred to as the 'flexible dealing' or 'special cases' exception, can be quite narrow and requires a use-case test to confirm whether its application is appropriate for the University's educational purposes. Staff should not apply S200AB without first consulting the Senior Librarian, Copyright and Scholarly Publishing (see Copyright Advice & Requests).

(26) 'Public domain' has a special meaning in terms of copyright, where copyright protection does not apply to material. The public domain designation should not be confused with material that is publicly accessible. Users should assume that material is subject to the limitations imposed by the Act and must treat material accordingly, unless clear marking is present that material is public domain and free of copyright.

(27) It is a requirement to include a copyright warning notice and/or some form of labelling when copying and communicating third-party copyright works for students, in addition to providing source/attribution information. The warning notice or labelling required will vary based on the material being shared; the licensing, agreement, or permission involved; and/or whether a specific exception is being relied upon within the Act. Situations when a notice or labelling is required may include:

a. when making PDF readings accessible via the Course Readings system (system generated);
b. in PowerPoint slides and course modules when copying and communicating third-party material;
c. when making audio-visual material available to students;
d. when making musical works available to students;
e. in course packs and/or when providing handouts in classes; and
f. when sharing material reliant upon a specified licence, agreement, or granted permission.

(28) Notice and labelling text for uses of copyright mterials can be found at Library – Copyright Notices.

Sampling Requirements

(29) The University is required to undertake periodic sampling activities to provide information on copying and communication performed under the S113P statutory licence and the Tertiary Music Agreement. All staff are required to cooperate with these activities, where requested, so that the University can meet its contractual commitments.

Use of Student-Created Materials

(30) As outlined in the University's Intellectual Property Policy, where staff desire to use student-created copyright material (such as course work or assessment submissions), they are generally required to seek permission from the student for any copying, reuse, or communication of the work(s), including but not limited to:

a. as sample or reference material in courses;
b. in dealings with external parties; or
c. for other purposes unrelated to the student's assessment and/or participation in the course.

Creation and Use of Open Educational Resources (OER)

(31) The University encourages and supports the creation and use of OER. The Library oversees the creation and conversion processes for OER at the University, and as part of the approval process all OER require:

a. attribution for authors involved with the OER, along with any contributors as required,
b. confirmation before publication that any copyright materials included in, or adapted for, the OER are being used and attributed appropriately, and
c. the application of a suitable open licence.

(32) Support for the use and inclusion of OER at the University is provided by the Library, including Library - Copyright. Other requirements and/or restrictions around the conversion of course materials to, or creation of, OER at the University are outlined in the University's Intellectual Property Policy.

‘Take Down’ Notices

(33) The University is required to comply with Part 6 of the Regulations in meeting its obligations to receive and respond to allegations of copyright infringement by third parties for content hosted on its systems or network.

(34) The University will act on all ‘take down’ notices promptly and remove or disable access to the copyright material specified in the notice. In the instance where the University identifies that there has been no infringement the University may issue a counter-notice.

(35) The University will restore, or (re)enable access to the copyright material following the issue of a counter-notice, providing that the copyright owner does not notify of a pending court order within the allowable timeframe as indicated in the Regulations. Where access to copyright material is restored following the issue of a counter-notice, there will be no further avenue for resolution of the matter within the University. The University will act in accordance with any subsequent court orders in relation to any such matter.

Moral rights

(36) Moral rights are those rights conferred to works protected by copyright under Part IX of the Act, to attribute creators and to treat their works respectfully. The University recognises the moral rights of creators, as outlined in the Intellectual Property Policy. Staff members and students must respect, and otherwise not infringe, these moral rights. This includes an obligation to attribute a copyrighted work whenever quoting, reproducing, communicating, or otherwise including another creator’s material (or parts thereof) in assessments, theses, publications, course readings, lecture notes, and/or other educational or research materials.

Indigenous Cultural and Intellectual Property (ICIP)

(37) ICIP, whilst distinct from copyright, may be incorporated or otherwise included in copyright material. Some forms of ICIP may also enjoy copyright protection. The University acknowledges and recognises that ICIP must be respected

and preserved and will be considered in any dealings with copyright works and/or material under this policy in accordance with the University's Aboriginal and Torres Strait Islander Cultural and Intellectual Property Policy Protocol.

Non-Compliance with this Policy

(38) The University does not tolerate breaches of copyright, including any use of its information and communications technology facilities, services, and/or materials that would breach copyright.

(39) Staff who do not comply with this policy may be subject the provisions of the misconduct / serious misconduct clauses of the applicable Enterprise Agreement or employment contract, in addition to any potential infringement penalties under the Act or the Regulations.

(40) Students who do not comply with this policy may be subject to the provisions of the Student Conduct Rule, in addition to any potential infringement penalties under the Act or the Regulations.

(41) The University treats breaches of policy seriously and encourages reporting of concerns about non-compliance – see Legislative Compliance and Breach Reporting.

Status and Details

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Enquiries Contact	University Library

Glossary Terms and Definitions

"University" - The University of Newcastle, a body corporate established under sections 4 and 5 of the University of Newcastle Act 1989.

"Risk" - Effect of uncertainty on objectives. Note: An effect is a deviation from the expected, whether it is positive and/or negative.

"Award" - When referring to a University qualification, this term means an academic qualification approved by Academic Senate that is conferred when a student has met the relevant program requirements. For all other uses of this term, the generic definition applies.

"Controlled entity" - Has the same meaning as in section 16A of the University of Newcastle Act 1989.

"Course" - When referring to a course offered by the University, a course is a set of learning activities or learning opportunities with defined, assessed and recorded learning outcomes. A course will be identified by an alphanumeric course code and course title. Course types include core courses, compulsory courses, directed courses, capstone courses and electives. For all other uses of this term, the generic definition applies.

"Student" - A person formally enrolled in a course or active in a program offered by the University or affiliated entity.

"External parties" - Any individual or organisation external to the University.

"Research" - As defined in the Australian Code for the Responsible Conduct of Research, or any replacing Code or document.

"Staff" - Means a person who was at the relevant time employed by the University and includes professional and academic staff of the University, by contract or ongoing, as well as conjoint staff but does not include visitors to the University.

"Learning Management System" - The web-based system used to help facilitate online interactions between staff and students in their learning and teaching activities.

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