



INFORMATION SHEET

G25

TV and radio: home taping

December 2006

In this information sheet, we give a brief overview of copyright law as it relates to taping from television and radio. For information about our other information sheets, other publications and training program, see our website <http://www.copyright.org.au> or contact us.

We update our information sheets from time to time. Check our website to make sure this is the most recent version.

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

Key points

- On 11 December 2006, the Copyright Act was amended to allow people to record TV and radio programs, on private premises, to watch or listen to at a more convenient time.
- In some cases, people can record TV and radio programs for other purposes, such as research or study.

When can you copy from television or radio without permission?

Time-shifting

People are now allowed to record a television or radio program, on private premises, to watch or listen to at a later time.

The new exception only applies if the recording is made for the sole purpose of:

- private and domestic use by
- watching or listening to the program at a more convenient time.

The new exception does *not* apply to:

- podcasts (though they are usually expressly licensed for private use); or
- webcasts (except, it appears, programs streamed simultaneously with a broadcast by a “traditional” broadcaster such as the ABC, SBS or one of the commercial free-to-air broadcasters).

The recording will be an infringing copy if it is:

- sold, rented or distributed (unless it is only loaned to a member of the person’s family or household); or
- played or shown in public or broadcast.

Research or study

You may record from TV or radio for your research or study, provided the use is **fair**. To work out whether the recording is fair, the issues you need to consider include:

- how much of the program you record; and

- whether you can buy a copy of the program or film (if you can, copying the whole, or most, of the program from TV or radio is unlikely to be fair).

In one case, a court held that “research” and “study” have the meanings given in the *Macquarie Dictionary*. You do not need to be enrolled in a course to make a fair dealing for research or study, so long as your purpose in using the material is genuinely for the purpose of research or study.

For further information on fair dealing for research or study, see our information sheet *Research or study*, available at <http://www.copyright.org.au/permission>.

Recording by educational institutions

Educational institutions can record TV and radio programs for educational purposes, provided the institution has undertaken to pay copyright fees to Screenrights. There is a similar scheme for institutions assisting people with intellectual disabilities.

Screenrights is a non-profit organisation authorised by the Commonwealth Government to collect and distribute copyright fees for owners of copyright on material shown on television: <http://www.screen.org>.

For further information, see our information sheets *Educational institutions*, available at <http://www.copyright.org.au/education>, and *Disabilities: use of copyright material for people with a disability*, available at <http://www.copyright.org.au/disability>.

Copying for government purposes

Commonwealth, State and Territory governments may record TV and radio programs for government purposes provided they have given an undertaking to pay copyright fees to Screenrights.

For further information, see our information sheet *Governments (Commonwealth, State and Territory)*, available from <http://www.copyright.org.au/government>.

Consequences of infringing copyright

Copying copyright material without permission infringes copyright, unless a special exception applies. People also infringe copyright if they authorise someone else to copy protected material without permission.

In addition, if you record a TV or radio program to watch later, but later do something else with the recording (such as sell it or give it away), it becomes an infringing copy.

A copyright owner who becomes aware of an infringement may take legal action, and seek orders from a court (such as compensation). A person who infringes copyright for commercial purposes (for example, by selling copies of programs taped from television) may also be charged with criminal offences.

For more information, see our information sheet *Infringement: actions, remedies, offences and penalties*, available at <http://www.copyright.org.au/permission>.

Common questions

Can I record from TV or radio at work?

The new “time-shift” provision doesn’t limit **where** you can make a copy from TV or radio, and it doesn’t limit **where** you can watch or listen to the copy you have made, but it does limit **why** you can copy.

You can only record from radio or TV if you are making the recording to watch at a more convenient time in a private and domestic context.

Do I have to watch or listen to the recording at home?

No. You can watch or listen to the recording at home, or you watch or listen to it privately outside the home (for example, on a portable device such as an iPod).

Can other people watch or listen to the recording with me?

Yes. You can watch the recording with other people who live in your house.

Can I record from TV or radio for other people?

The legislation is not clear, but it seems that you can record from TV and radio for members of your household or your family to watch at a more convenient time. You are entitled to lend the recording to members of your household or family, but it seems that you are not entitled to give it to them.

Can I record programs that I'm watching or listening to so that I can enjoy them again later?

No. You can only record programs that you are **not** watching or listening to. This is because the new time-shift provision says that you can only make the recording in order to watch it or listen to it "at a time more convenient than the time when the broadcast is made".

Can I give "time-shift" copies to my friends?

No; the recording becomes an infringing copy if you do. You can lend (but not give) the recording to members of your family and household.

In some cases, the friend who wants to see or listen to the program may be able to legitimately download it from the Internet. The ABC, Channel Nine, BigPond and iTunes, for example, have digital downloads of some programs available. In some cases, the download is free and in some cases it requires payment.

How long can I keep copies under the new "time-shifting" provision?

The new time-shifting provision doesn't set a limit on how long you can keep a copy of something recorded from radio or TV, and there is no express obligation to destroy the recording after you have watched it. However, your purpose for making the copy must be to watch it at a more convenient time.

The government has made the following statement about the intention behind the new provision:

Whilst the exception does not require immediate deletion of the television or radio program after watching or listening to it, the exception does not permit a person to record a broadcast and keep it indefinitely in a collection of films or sound recordings for repeated use.

Does the new "time-shift" provision allow me to copy from the internet?

You can rely on the new time-shift provision to copy a program that is being simultaneously broadcast by a radio or TV station both over the air (or via cable or satellite) **and** over the internet.

You cannot, however, rely on the provision to copy programs available on demand, such as podcasts or vodcasts. For these, check the terms and conditions on the relevant website: these will generally set out what you can do with material that is made available as a digital download or stream.

Where I live, we can receive broadcasts from overseas. Can I copy these under the new "time-shift" provision?

Yes. The time-shift provision in the Australian Copyright Act allows you to copy any radio or TV broadcast you can receive in Australia.

The new provision does not, however, allow you to copy a program while you are travelling overseas. To work out whether or not you can copy from radio or TV while you are overseas, you would need to look at whether or not the relevant country's copyright laws allow you to do so.

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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