Staying on the right side of Copyright

How Copyright applies to you as a University researcher or student

adelaide.edu.au
About Me

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Legal and Risk
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www.adelaide.edu.au/legalandrisk

**Important Notice:**
In this presentation, references to University policies or licences are to the University of Adelaide. If you are not a University of Adelaide staff, titleholder or student, please consult with your respective institution’s Copyright Officer on the applicability of the information in this presentation to your circumstances.
Outline

• What is Copyright
• Copyright in materials you create
• Using Copyrighted materials
• Breach of Copyright vs Plagiarism
• What could happen if you breach Copyright
What is Copyright?
What is Copyright?

• **Exclusive economic rights** given to authors or creators of works to protect their works against unauthorised use

• International treaties → national legislation (Copyright Act 1968 (Commonwealth))

• Can be assigned (i.e. given) to other persons / organisations
What does Copyright protect?

• Protects the expression of ideas in a material form

• Does not protect:
  – Ideas
  – Styles
  – Techniques
  – Facts / information
  – Names

• Must be original, but no need for literary or artistic quality
What does Copyright apply to?

“WORKS”

• literary (eg. books, journal articles, newspaper articles, song lyrics, computer programs, tables, compilations)
• dramatic (eg. plays)
• written music
• artistic (eg. paintings, sculptures, photographs)
What does Copyright apply to?

“SUBJECT MATTER OTHER THAN WORKS” (SMOW)

- cinematograph films
- sound recordings (distinct from the underlying music or lyrics)
- TV and radio broadcasts
- Published editions (typographical arrangement & layout of publications)
Does Copyright apply to data?

• Not to data itself, but may apply to the way in which it is presented

• Mere information / collection of data = no
e.g. Measurements, Lists, collation of survey responses

• *Telstra Corporation Limited v Phone Directories Company Pty Ltd (2010)*
  - No © in White or Yellow Pages
### Station Details
**ID:** 023090  **Name:** KENT TOWN  **Lat:** -34.92  **Lon:** 138.62  **Height:** 48.0 m

Data from the previous 72 hours. | See also: [Recent months at Adelaide](http://www.bom.gov.au/products/ids60901/ids60901_94675.shtml#other_formats)

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Does Copyright apply to data?

- Compilation produced with exercise of author’s skill, judgment, creativity or effort in selecting, presenting or arranging the information = **maybe**
  - e.g. assembly of data into a useful matrix; pictorial representation of data

- **Dynamic Supplies Pty Ltd v Tonnex International Pty Ltd (2011)**
  - Yes © in csv file of printer and computer details (compatibility chart)
### Student Statistics

#### Total Student Enrolments

<table>
<thead>
<tr>
<th>Category</th>
<th>Persons 2011</th>
<th>Persons 2010</th>
<th>EFTSL 2011*</th>
<th>EFTSL 2010</th>
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</thead>
<tbody>
<tr>
<td>Commencing Student Enrolments</td>
<td>25,055</td>
<td>24,154</td>
<td>19,633</td>
<td>18,883</td>
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<tr>
<td>Aboriginal &amp; TS Islander Students</td>
<td>9,824</td>
<td>9,742</td>
<td>7,113</td>
<td>6,974</td>
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<tr>
<td>International Students - onshore</td>
<td>6,512</td>
<td>6,393</td>
<td>5,478</td>
<td>5,307</td>
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<tr>
<td>International Students - offshore</td>
<td>691</td>
<td>640</td>
<td>314</td>
<td>257</td>
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</table>

#### By Level of Program

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<td>Postgraduate Coursework</td>
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<td>Bachelor Degrees</td>
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<td>16,574</td>
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<tr>
<td>Other</td>
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<td>1,196</td>
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#### By Faculty

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<th>2010</th>
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</thead>
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<td>Health Sciences</td>
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#### By Campus

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<tbody>
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<td>North Terrace (includes hospitals)</td>
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<td>22,246</td>
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### Time Series

#### Total Student Enrolments

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<th>Persons 2010</th>
<th>EFTSL 2011*</th>
<th>EFTSL 2010</th>
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</thead>
<tbody>
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<td>2009</td>
<td>6,512</td>
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<td>5,478</td>
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<tr>
<td>2008</td>
<td>691</td>
<td>640</td>
<td>314</td>
<td>257</td>
</tr>
</tbody>
</table>

### International Enrolments

#### By country 2011 (includes onshore and offshore)

- USA 2%
- Korea, Republic of 2%
- Indonesia 2%
- Viet Nam 2%
- Hong Kong (SAR of China) 5%
- Malaysia 12%
- Other 13%

Source: Data Warehouse. *Preliminary figures
When does Copyright exist?

- Automatic upon creation
- Free
- No need to apply © symbol
- Generally lasts for life of creator + 70 years
- © has expired if creator died before 1 Jan 1955
What does having “copyright” actually mean?

For **Works**, exclusive rights to:

- reproduce the work (*eg. photocopy, scan, film*)

- make the work public for the first time (*eg. publish*)

- communicate the work to the public (*eg. via email, broadcasting, internet*)

- perform the work in public [*excluding artistic works*]

- make an adaptation (*eg. a translation, arrangement*) [*excluding artistic works*]
What does having “copyright” actually mean?

• For SMOW, exclusive rights to:
  
  – reproduce the work
  
  – show films or play sound recordings in public
  
  – transmit films or sound recordings to the public using any form of technology
Moral Rights

**Personal legal rights** belonging to creators of *Works* and cinematograph films

- The right of attribution of authorship
- The right not to have authorship of a work falsely attributed
- The right of integrity

**Moral Rights cannot be transferred**
Who owns copyright in the works you create?
Copyright in works you create

STAFF
• Under Copyright Act, employer owns if created in the course of your employment

• University Intellectual Property Policy:

  The University does not assert ownership over copyright in Scholarly or Creative works unless:
  - You were specifically engaged by the University to create such work; or
  - The work is subject to an overriding contractual obligation with a third party; or
  - The work relates to IP which is being commercialised.
Copyright in works you create

STUDENTS

• University Intellectual Property Policy:
  Students retain copyright in their works except those arising out of a project which:
  - builds on pre-existing University IP; or
  - is carried out for, or in conjunction with, a third party (e.g. sponsored research; student internship)
So you want to make a copy of someone else’s work?
Rule of thumb

Must obtain express permission unless any of the following applies:

- Copyright has expired
- not a ‘substantial’ part
- Use already authorised by Copyright owner or authorised licensor (e.g. Creative Commons, some websites)
- Can rely on a special exception

Clipart courtesy FCIT, http://etc.usf.edu/clipart/
Copyright compliance myths

“On the internet = free for all”

“I can use it as long as I include a proper reference”

“I’m not making any money from it so it’s ok”
Teaching purposes

Statutory licences

- Part VA Licence: Radio / TV broadcasts
  - Can make recordings off air or podcasts
  - no limit on amount
  - Labelling requirements
  - Copies placed online must be limited to current staff / students

** Does not include DVDs or YouTube videos!!
Teaching purposes

Statutory licences

- Part VB Licence: Text / images
  - Can copy books, journal articles, websites, images
  - Copying limits ("10% or 1 Chapter" rule)
  - Copies placed online must be limited to current staff / students
  - If digitising from hardcopy, go through DRMC (Digital Resource Management Centre)
Teaching purposes

University-wide negotiated licences

• Music licence
  - copy sound recordings from physical media
  - Musical work must be on APRA / AMCOS list
  - Copies placed online must be limited to current staff / students

** Does not include iTunes or streamed music
Teaching purposes

University-wide negotiated licences

- Library electronic resources
  - Electronic journals, ebooks
  - Some more generous than 10% / 1 chapter (check with DRMC)
Research and Study purposes

‘Fair dealing’ for research or study exception

• To undertake research or study
• Copies for reference or incorporate into own work for assessment
• “Reasonable portion”
  – 10% or 1 chapter for books
  – Single article from a journal (more permitted if for same course of study or research)
• If “reasonable portion” does not apply, use 5 factor “fairness test”
Research and Study purposes

‘Fair dealing’ for research or study exception

• A personal exception
• Does not apply if:
  – Copy is made for someone else
  – You publish your work that incorporates the copy
  – You use your work for another purpose
Other relevant exceptions

‘Fair dealing’ for criticism or review exception
• 5 factor “fairness” test
• Can use for publications or presentations
• Must include critical comment or analysis of the work

Format shifting items you own
• Private and domestic purposes only
• Digitise hardcopy books
• Rip music CD to computer
Is plagiarism the same as breaching copyright?
Copyright vs Plagiarism

• Plagiarism = academic concept, not a legal principle
• Illegitimately copied material not considered plagiarised if appropriately referenced
• Plagiarised work may not be a breach of copyright

But
• Failure to attribute author or a false claim of authorship is a breach of Moral Rights
Copyright vs Plagiarism

Consider these examples of plagiarism:

• Presenting work that is not your own in any format, without appropriate attribution or reference to the original source

• paraphrasing or copying work that is not your own, without due acknowledgement by way of reference to the original work

• adopting the ideas of others, or the structure of an existing analysis, without due acknowledgement by way of reference to the original source.
Source acknowledged BUT no © exception or permission from © owner

Breach of Copyright

Plagiarism

Work not subject to © or have © exception / permission from © owner
BUT source not acknowledged

No © exception or permission from © owner AND source not acknowledged
What could happen if you breach copyright?
University penalties

University’s Copyright Policy:

• Staff must not infringe copyright whilst undertaking University duties
• University facilities must not be used to infringe copyright
• Breaches may constitute misconduct
Legal penalties

- Personal liability
- Fines & criminal sanctions only for commercial-scale infringement
- Copyright owners can sue for “reasonable royalty”
Questions? Contact me

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