Copyright in University Libraries
About Me

Ben McKay
Legal Counsel & Copyright Officer
Legal and Risk
www.adelaide.edu.au/legalandrisk
Outline

• What is Copyright?
• Copyright compliance requirements
• Dual compliance role of University libraries
  1. Assistance for University’s educational activities
  2. General library services
• Students and Copyright
• Library facilities / resources
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
<table>
<thead>
<tr>
<th>Date/Time CDT</th>
<th>Tmp °C</th>
<th>App Tmp °C</th>
<th>Dew Point °C</th>
<th>Rel Hum %</th>
<th>Delta-T °C</th>
<th>Wind Dir</th>
<th>Spd km/h</th>
<th>Gust km/h</th>
<th>Spd kts</th>
<th>Gust kts</th>
<th>Press QNH hPa</th>
<th>Press MS hPa</th>
</tr>
</thead>
<tbody>
<tr>
<td>26/06:30pm</td>
<td>25.0</td>
<td>23.2</td>
<td>14.4</td>
<td>51</td>
<td>6.3</td>
<td>SSE</td>
<td>17</td>
<td>28</td>
<td>9</td>
<td>15</td>
<td>1017.3</td>
<td>-</td>
</tr>
<tr>
<td>26/06:00pm</td>
<td>25.4</td>
<td>24.2</td>
<td>13.9</td>
<td>49</td>
<td>6.8</td>
<td>SE</td>
<td>13</td>
<td>20</td>
<td>7</td>
<td>11</td>
<td>1016.6</td>
<td>1016.5</td>
</tr>
<tr>
<td>26/05:30pm</td>
<td>25.9</td>
<td>23.8</td>
<td>13.5</td>
<td>46</td>
<td>7.3</td>
<td>SSE</td>
<td>17</td>
<td>28</td>
<td>9</td>
<td>15</td>
<td>1016.5</td>
<td>-</td>
</tr>
<tr>
<td>26/05:00pm</td>
<td>26.5</td>
<td>24.2</td>
<td>11.9</td>
<td>40</td>
<td>8.4</td>
<td>ESE</td>
<td>15</td>
<td>24</td>
<td>8</td>
<td>13</td>
<td>1016.2</td>
<td>-</td>
</tr>
<tr>
<td>26/04:30pm</td>
<td>27.1</td>
<td>24.9</td>
<td>12.0</td>
<td>39</td>
<td>8.7</td>
<td>SE</td>
<td>15</td>
<td>28</td>
<td>8</td>
<td>15</td>
<td>1017.0</td>
<td>-</td>
</tr>
<tr>
<td>26/04:00pm</td>
<td>26.9</td>
<td>26.2</td>
<td>14.2</td>
<td>45</td>
<td>7.6</td>
<td>SE</td>
<td>11</td>
<td>20</td>
<td>6</td>
<td>12</td>
<td>1017.0</td>
<td>-</td>
</tr>
<tr>
<td>26/03:30pm</td>
<td>25.8</td>
<td>24.5</td>
<td>15.8</td>
<td>54</td>
<td>6.1</td>
<td>WNW</td>
<td>17</td>
<td>22</td>
<td>9</td>
<td>12</td>
<td>1017.6</td>
<td>-</td>
</tr>
<tr>
<td>26/03:00pm</td>
<td>25.3</td>
<td>23.8</td>
<td>15.4</td>
<td>54</td>
<td>6.0</td>
<td>W</td>
<td>13</td>
<td>22</td>
<td>7</td>
<td>12</td>
<td>1017.8</td>
<td>1017.7</td>
</tr>
<tr>
<td>26/02:30pm</td>
<td>26.1</td>
<td>24.4</td>
<td>15.4</td>
<td>54</td>
<td>7.4</td>
<td>E</td>
<td>15</td>
<td>26</td>
<td>8</td>
<td>14</td>
<td>1018.1</td>
<td>-</td>
</tr>
<tr>
<td>26/02:00pm</td>
<td>25.2</td>
<td>24.5</td>
<td>14.4</td>
<td>51</td>
<td>6.4</td>
<td>SW</td>
<td>11</td>
<td>17</td>
<td>6</td>
<td>9</td>
<td>1018.6</td>
<td>-</td>
</tr>
<tr>
<td>26/01:30pm</td>
<td>25.9</td>
<td>24.7</td>
<td>14.1</td>
<td>48</td>
<td>7.0</td>
<td>W</td>
<td>13</td>
<td>19</td>
<td>7</td>
<td>10</td>
<td>1018.9</td>
<td>-</td>
</tr>
<tr>
<td>26/01:00pm</td>
<td>26.0</td>
<td>24.4</td>
<td>13.8</td>
<td>47</td>
<td>7.2</td>
<td>W</td>
<td>15</td>
<td>20</td>
<td>8</td>
<td>11</td>
<td>1019.3</td>
<td>-</td>
</tr>
<tr>
<td>26/12:30pm</td>
<td>24.7</td>
<td>23.6</td>
<td>13.2</td>
<td>48</td>
<td>6.7</td>
<td>W</td>
<td>11</td>
<td>15</td>
<td>6</td>
<td>8</td>
<td>1020.0</td>
<td>-</td>
</tr>
<tr>
<td>26/12:00pm</td>
<td>25.4</td>
<td>23.8</td>
<td>12.8</td>
<td>51</td>
<td>7.3</td>
<td>W</td>
<td>13</td>
<td>20</td>
<td>7</td>
<td>11</td>
<td>1020.4</td>
<td>1020.3</td>
</tr>
<tr>
<td>26/11:30pm</td>
<td>23.9</td>
<td>23.5</td>
<td>12.5</td>
<td>54</td>
<td>6.5</td>
<td>N</td>
<td>6</td>
<td>15</td>
<td>3</td>
<td>9</td>
<td>1021.0</td>
<td>-</td>
</tr>
<tr>
<td>26/11:00pm</td>
<td>23.1</td>
<td>22.6</td>
<td>12.6</td>
<td>51</td>
<td>6.0</td>
<td>NE</td>
<td>7</td>
<td>13</td>
<td>4</td>
<td>7</td>
<td>1021.2</td>
<td>-</td>
</tr>
<tr>
<td>26/10:30am</td>
<td>22.0</td>
<td>21.1</td>
<td>12.5</td>
<td>54</td>
<td>5.4</td>
<td>N</td>
<td>9</td>
<td>17</td>
<td>5</td>
<td>9</td>
<td>1021.4</td>
<td>-</td>
</tr>
<tr>
<td>26/10:00am</td>
<td>20.1</td>
<td>19.3</td>
<td>12.8</td>
<td>63</td>
<td>4.1</td>
<td>WNW</td>
<td>9</td>
<td>13</td>
<td>5</td>
<td>7</td>
<td>1021.4</td>
<td>-</td>
</tr>
</tbody>
</table>
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

<table>
<thead>
<tr>
<th></th>
<th>Persons</th>
<th>EFTSL</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Total Student Enrolments</strong></td>
<td>25,055</td>
<td>24,154</td>
</tr>
<tr>
<td>Commencing Student Enrolments</td>
<td>9,824</td>
<td>9,742</td>
</tr>
<tr>
<td>Aboriginal &amp; TS Islander Students</td>
<td>184</td>
<td>198</td>
</tr>
<tr>
<td>International Students - onshore</td>
<td>6,512</td>
<td>6,393</td>
</tr>
<tr>
<td>International Students - offshore</td>
<td>691</td>
<td>640</td>
</tr>
<tr>
<td><strong>By Level of Program</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Postgraduate Research</td>
<td>2,113</td>
<td>1,987</td>
</tr>
<tr>
<td>Postgraduate Coursework</td>
<td>4,907</td>
<td>4,889</td>
</tr>
<tr>
<td>Bachelor Degrees</td>
<td>17,435</td>
<td>16,574</td>
</tr>
<tr>
<td>Other</td>
<td>1,130</td>
<td>1,196</td>
</tr>
<tr>
<td><strong>By Faculty</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Engineering, Computer &amp; Maths Sciences</td>
<td>5,004</td>
<td>4,726</td>
</tr>
<tr>
<td>Health Sciences</td>
<td>4,436</td>
<td>4,158</td>
</tr>
<tr>
<td>Humanities and Social Sciences</td>
<td>4,438</td>
<td>4,318</td>
</tr>
<tr>
<td>Sciences</td>
<td>3,311</td>
<td>3,131</td>
</tr>
<tr>
<td>Professions</td>
<td>8,539</td>
<td>8,272</td>
</tr>
<tr>
<td>Central Areas</td>
<td>425</td>
<td>576</td>
</tr>
<tr>
<td><strong>By Campus</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>North Terrace (includes hospitals)</td>
<td>23,021</td>
<td>22,246</td>
</tr>
</tbody>
</table>

### Time Series

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Total Student Enrolments</strong></td>
<td>25,055</td>
<td>24,154</td>
<td>22,472</td>
<td>21,316</td>
<td></td>
</tr>
<tr>
<td>Commencing Student Enrolments</td>
<td>9,824</td>
<td>9,742</td>
<td>9,081</td>
<td>8,365</td>
<td></td>
</tr>
<tr>
<td><strong>Total Student Load (EFTSL)</strong></td>
<td>19,633</td>
<td>18,883</td>
<td>17,539</td>
<td>16,849</td>
<td></td>
</tr>
<tr>
<td>Commencing Student Load (EFTSL)</td>
<td>7,113</td>
<td>6,794</td>
<td>6,552</td>
<td>6,005</td>
<td></td>
</tr>
<tr>
<td><strong>International Student Enrolments</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>At Australian Campuses (onshore)</td>
<td>6,512</td>
<td>6,393</td>
<td>5,752</td>
<td>5,270</td>
<td></td>
</tr>
<tr>
<td>At Campuses outside Australia (offshore)</td>
<td>691</td>
<td>640</td>
<td>548</td>
<td>638</td>
<td></td>
</tr>
<tr>
<td><strong>Total Student Completions</strong></td>
<td>N/A</td>
<td>6,004</td>
<td>5,224</td>
<td>5,332</td>
<td></td>
</tr>
</tbody>
</table>

Source: Data Warehouse. *Preliminary figures

### 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%
- China (excl SARS & Taiwan) 49%
- Other 13%

Pie chart shows distribution of international enrolments by country.
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

Refer:
http://www.adelaide.edu.au/legalandrisk/copyright/overview/duration/
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 **
Copyright compliance requirements
University’s position

• Copyright Act applies to University as well as individuals

  – Staff must not infringe copyright whilst undertaking University duties
  – University facilities must not be used to infringe copyright
  – Breaches may constitute misconduct and/or personal liability
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”
Role of University libraries
Dual role of University libraries

• Part of the University
  – Provides assistance to staff and students
  – University has special exceptions under Copyright Act
  – Assist University in copyright compliance

• Library in its own right
  – Provides public access to its collection
  – Specific provisions under the Copyright Act apply to libraries
  – Operate in a manner that is copyright compliant
Assistance to teaching staff

DRMC digitises literary works for staff to upload onto MyUni

- Insubstantial portions
  - Up to 2 pages if work is <200 pages
  - Up to 1% if work is >200 pages or electronic & unpaginated
  - Must wait 14 days before another insubstantial portion of the same work can be copied or communicated

- Part VB licence
Part VB licence

✓ Books
✓ Poems, songs
✓ Journal / newspaper articles
✓ Music scores
✓ Images from hardcopy or internet
✓ Published editions
Part VB licence

• Statutory licence + collective Remuneration Agreement with Copyright Agency Limited

• UA annual fee approx $800k per year (based on EFTSL)

• Copies must:
  – Be for educational purposes
  – Be distributed only to staff and enrolled students
  – Comply with quantity restrictions

• CAL survey approx every 3 years
Part VB licence - restrictions

10% or 1 chapter

Hardcopy - Whole image if explains accompanying text
Electronic – whole image (if from legitimate source)

1 article from each issue unless same subject matter
Part VB licence - restrictions

• Hardcopies
  – should contain a Part VB warning notice
  – 10% / 1 chapter limit applies per course

• Electronic communication / online access
  – digitise through DRMC
  – limit to students in the course (use MyUni)
  – must contain prescribed Warning Notice
  – 10% / 1 chapter limit applies across University
COMMONWEALTH OF AUSTRALIA
Copyright Regulations 1969

WARNING

This material has been reproduced and communicated to you by or on behalf of The University of Adelaide under Part VB of the Copyright Act 1968 (the Act).

The material in this communication may be subject to copyright under the Act. Any further reproduction or communication of this material by you may be the subject of copyright protection under the Act.

Do not remove this notice.
Other licences for teaching purposes

• **Part VA licence**
  – Radio / TV broadcasts (free-to-air and Pay TV)
  – Can copy & communicate whole or part

• **Music licence**
  – copy / communicate sound recordings for educational purposes
  – Student / staff performance of musical works
  – Play sound recordings at University events

* Musical work must be on APRA / AMCOS list
General library services
Copies for users (s49)

- Published work (incl journal / newspaper articles)

- User submit written declaration (email / online form ok)
  - Requires copy for research or study
  - Will not use it for any other purpose
  - Has not been previously supplied with copy
COPYRIGHT DECLARATION

I understand that all documents requested by me are subject to requirements of the 1968 Copyright Act s49(1) and agree to abide by the requirements of the Act for all such items:

1. ALL copies requested by me under this agreement are required for the purpose of research or study, will not be used for any other purpose, and have not previously been supplied to me by the Library.

2. ALL requests made by me and sent to the Library via the Internet require the use of my Username and Password to access the electronic request forms.

3. The Library may treat as signed by me any electronic request and declaration made under subsection 49 (1) of the Copyright Act, obtained as outlined in clause 2 above.

4. I understand that it is an offence under section 203F of the Act to make a declaration under section 49 that I know, or ought reasonably to know, is false or misleading in any material particular, when signed by me in the manner stated under clause 3 (above).

☐ I Agree (You must agree to this declaration before proceeding)
Copies for users (s49)

Library’s obligations:

• Only copy within copying limits (similar to Part VB licence)
• Any charges imposed must only be to cover costs
• Include warning notice if sending electronic copy
• Delete electronic copy once sent
• Retain user declarations for 4 years
s49 Warning Notice

Commonwealth of Australia

Copyright Act 1968

Notice for paragraph 49 (7A) (c) of the Copyright Act 1968

Warning

This material has been provided to you under section 49 of the Copyright Act 1968 (the Act) for the purposes of research or study. The contents of the material may be subject to copyright protection under the Act.

Further dealings by you with this material may be a copyright infringement. To determine whether such a communication would be an infringement, it is necessary to have regard to the criteria set out in Division 3 of Part III of the Act.
Copies of unpublished works (s51)

– Unpublished theses (or similar literary work) kept in library of a university
– Library can make copy and supply to a person
– Must be satisfied that the person requires the copy for the purposes of research or study
– No other prescriptions unlike s49
Making inter-library copies

- Published work (incl journal / newspaper articles)
- May make copy upon request of another library
  - for the other library’s collection
  - to satisfy the other library user’s request
- Cost recovery permitted
- If supplying copy electronically, do not retain saved copy
- No liability for University library or staff if making copy upon request of another library
Requesting inter-library copies

• May request another library to make a copy of a work
  – for our University library’s collection
  – to satisfy our University library user’s request

• Requesting library’s responsibility to ensure:
  – If from hardcopy – a **reasonable portion**
  – If from electronic source – that it is not commercially available
Definition of ‘library’

(a) a library all or part of whose collection is accessible to members of the public directly or through interlibrary loans; or

(b) a library whose principal purpose is to provide library services for members of a Parliament; or

(c) an archives all or part of whose collection is accessible to members of the public.
Preservation copies (s51A)

• To preserve manuscript or original artistic work OR
• To replace damaged or deteriorated published work OR
• To replace lost or stolen work
  AND
• Work is no longer commercially available

* Reason for copying should be noted on the copy made
Other provisions

Format shifting (s110)

- Copying into new technological format (e.g. Videotape to DVD)
- Must be for preservation purposes

Special purpose (s200AB)

- If no other exemption
- For the purpose of maintaining or operating the library
- Use must be non-commercial & not prejudice copyright owner
s200AB examples

- Converting cassette tapes to CD if library no longer has cassette players for users to use
  - Must check that CD is not commercially available
  - Ensure all copyright notices are replicated
  - Number of copies should not exceed number of originals held

- Digitising archival material to make available for users’ research or study (e.g. pamphlets, letters)
  - Check that items do not have commercial value
  - Most likely to be ok if orphan works
Students and Copyright
Students

• Responsible for their own actions in dealing with © material
• Fair Dealing exemptions allow “reasonable portion”
  – Research or study (e.g. assignments, thesis)
  – Criticism or review (e.g. journal article, conference paper)
• “Reasonable portion”
  – 10% or 1 chapter for literary works
  – 5 factor test for additional amount / other works
Student Theses

• Hardcopy retained by library = unpublished work
• Digital thesis
  – Made available by University to the public as part of Australasian Digital Theses program (now via NLA’s Trove service)
  – thesis is uploaded onto University server = communication
  – Research / study exemption not applicable to University
  – University responsible for © infringements
Library facilities /resources
Copying equipment for public use

- Public photocopiers / scanners / AV copying equipment must have prescribed warning notice beside them
- Lack of notice may result in offence of ‘authorising infringement’
Notice about the reproduction of works and the copying of published editions

Warning

Copyright owners are entitled to take legal action against persons who infringe their copyright. A reproduction of material that is protected by copyright may be a copyright infringement. Certain dealings with copyright will not constitute an infringement, including:

- a reproduction that is a fair dealing under the Copyright Act 1968 (the Act), including a fair dealing for the purposes of research or study; or
- a reproduction that is authorised by the copyright owner.

It is a fair dealing to make a reproduction for research or study, of one or more articles in a periodical publication for the same research or same course of study or, for any other work, of a reasonable portion of a work.

For a published work in hardcopy form that is not less than 10 pages and is not an artistic work, 10% of the number of pages, or one chapter, is a reasonable portion.

For a published work in electronic form only, a reasonable portion is not more than, in the aggregate, 10% of the number of words in the work.

More extensive reproduction may constitute fair dealing. To determine whether it does, it is necessary to have regard to the criteria set out in subsection 40 (2) of the Act.

A court may impose penalties and award damages in relation to offences and infringements relating to copyright material.

Higher penalties may apply, and higher damages may be awarded, for offences and infringements involving the conversion of material into digital or electronic form.
e-journals / e-books

• Terms of use / access governed by contract

• Usually more generous than Part VB or s49 provisions, e.g
  – No limit on number of articles that can be reproduced

• If contract terms are narrower than Copyright exceptions
  – Use may not be a breach of Copyright but
  – May constitute a breach of contract

• However, generally do not permit copying for inter-library requests
The Future of Copyright?

• Copyright and the Digital Economy - ALRC Report Recommendations
  - General “fair use” or broader “fair dealing”
  - Voluntary Part VA / VB licences
  - Easier to use orphan works

“I remain to be persuaded that this is the best direction for Australian law”
– George Brandis, Attorney-General, 14 Feb 2014
Questions? Contact me

Ben McKay
Legal Counsel
Legal and Risk

ben.mckay@adelaide.edu.au
8313 0065