

EDUCATION SERVICES AUSTRALIA

The Sharing Exchange: Copyright considerations prior to sharing content

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1.0 Introduction

1.1 Purpose

The Sharing Exchange: copyright considerations prior to sharing content has been prepared to assist Australian education jurisdictions in their consideration of matters relating to copyright (and associated permissions) for content that will be shared.

The intention of providing this general information is to:

- guide jurisdictions in identifying which rights may need to be obtained prior to sharing content
- introduce jurisdictions to some of the licensing options available for sharing content within the Sharing Exchange (ShEx).

The information contained in *The Sharing Exchange* is for general information purposes only and does not constitute legal advice. It is important that you obtain legal advice to ensure that your specific needs can be considered. While Education Services Australia Limited (ESA) has attempted to ensure that the general information contained in *The Sharing Exchange* is accurate at the date it was written, it will not be responsible or be subject to any claim (monetary or otherwise) for any loss you or anyone else may suffer as a result of any act or omission in reliance upon it.

2.0 What is the Sharing Exchange (ShEx)?

The Sharing Exchange is a system managed by ESA on behalf of jurisdictions that allows nominated users, who are likely to be teachers or students, to upload content, complete an educational metadata profile, attach a licence and then share that content with other jurisdictions.

3.0 Rights to confirm before sharing content

Once you have decided to share content with other education jurisdictions, you need to establish:

1. who owns copyright in the content
2. whether permissions* (or consents) need to be obtained for the use of third-party material prior to that content being shared
3. what sort of the licence you intend to make the content available in the Sharing Exchange.

* Permission is required to be obtained in relation to material that is owned by a third party and which is included in content you intend to share.

In addition, you need to ensure that any permissions required for use of third-party material:

- have been obtained in writing

- permit sharing the third-party material in the Sharing Exchange under the terms of the licence you have selected.

3.1 Ownership of copyright

If the content in question is material that your jurisdiction created 'from scratch', you should still confirm copyright ownership. If the material was created by authors, illustrators or developers who are not employees of your jurisdiction, then you need to ensure the copyright has been assigned or licensed in a manner that allows the proposed sharing of the material in the Sharing Exchange.

3.2 Obtaining permissions for teacher and student material

If teacher and/or student material is incorporated within the content that you intend to share, you need to confirm that you have the necessary permissions in place before proceeding.

Where a teacher contributes material that:

1. has been created entirely by the teacher during work time, then that material is likely to be owned by their employer. If their employer is the state education jurisdiction that intends to share the material on the Sharing Exchange, then you do not need to obtain from the teacher permission for use
2. contains items (for example photographs) that were created by the teacher in their private time, then you need to seek written permission from the teacher to permit sharing of their material in the Sharing Exchange
3. does not indicate that third-party material has been included (for example there are no attributions or acknowledgements) but some items appear to be owned by a third party, then check with the teacher as to the source of the material and seek permissions if required
4. contains third-party material, then seek relevant permissions for use in the Sharing Exchange.

Where a student contributes material that:

1. has been created entirely by the student, then the material is owned by the student. Students own copyright in the materials they create. You need to obtain permission in writing from the student's parents or guardians (if the student is a minor) before proceeding with sharing such material. Note: some schools have procedures for obtaining copyright permissions from parents up-front for material created by the student during the school year that may cover your intended use
2. contains third-party material, then seek relevant permissions for use in the Sharing Exchange.

3.2.1 Photographs of students

If photographs of students are included in the content that you intend to share, you need to obtain consent in writing from the student's parents or guardians (if the student is a minor) before proceeding.

3.3 Obtaining permissions for use of third-party material

In addition to ensuring that you have signed assignments or licences with all non-employee creators of new content and that permissions or consents have been obtained for relevant teacher and student material or images, you need

to consider whether any **other** copyright material has been included in the content you intend to share. Other copyright material may include text excerpts, illustrative material, sound files, video, and any other media sourced from other third-party creators.

While creating and owning all copyright in all material included in your publication means you do not need to obtain permission for use, including quality, unique pre-existing material from other sources can be a valuable addition to your content. It is recommended to include a pre-publication review of the content in the early stages in your publishing process to ensure that any embedded third-party copyright material is identified and acknowledged.

Sometimes it is assumed incorrectly that material like ClipArt graphics and screenshots of content in websites do not need to be dealt with as third-party material. For this reason you may instigate a requirement that any item that has not been created by the author 'from scratch' is drawn to your attention at the earliest stage possible to ensure that permission, if necessary, is obtained prior to publication.

Unless the material is out of copyright or an exception applies, you need to obtain permission from the copyright owner. For guidelines on whether copyright has expired or not, refer to the information sheet 'Duration of copyright' on the [Australian Copyright Council's website](#) . It is important that you obtain all permissions in writing with a signature.

If you choose to rely on statutory licences* to reproduce third-party copyright material, doing so exposes your jurisdiction and other jurisdictions to payment of ongoing licence fees to collecting societies. The alternative of obtaining permission directly from the copyright holder for the material to be used for Australian non-commercial educational purposes means that you can ensure that use of the material will not be subject to ongoing costs. Further, you may be able to obtain the copyright holder's permission for more activities than the statutory licences permit resulting in more scope for use of the content.

* The Copyright Act provides education institutions with a statutory licence (the right) to do certain things without seeking permission directly from the copyright owner. Part VA of the Act allows educational institutions to record and use TV and radio programs for educational purposes, provided they have given a remuneration notice to Screenrights. Part VB allows educational institutions to copy and communicate non-AV material – such as text, still image and notated music – for educational purposes, provided they have given a remuneration notice to Copyright Agency Limited. Under these statutory licences, education institutions are required to pay remuneration to the relevant collecting society.

3.4 Moral rights

An individual creator of material (whether or not they own copyright) has rights called 'moral rights', which are the rights granted to a creator to:

- be attributed as the creator of their work
- take action if their work is falsely attributed as being someone else's work or is altered by someone else but attributed as if it were unaltered
- take action if their work is distorted or treated in a way that is prejudicial to their honour or reputation.

If a creator of third-party material is not attributed within content you intend to share or their material is used in different contexts to that originally indicated by the creator, in addition to obtaining permission from the copyright holder, you should obtain consent from the creator to not attribute or to use their work in different contexts.

4.0 Preparing a permissions letter for licensing third-party material

Once you have ascertained that there is third-party copyright material that requires permission, you need to prepare a letter to be used for contacting copyright owners in order to request permission. Or, you may need to confirm that the letter generally used for this purpose seeks all required rights.

At a minimum, the permissions letter that you prepare for contacting copyright holders should include:

- a clear description of the copyright material that you wish to reproduce
- an accurate statement regarding the intended use of the material*.

* If you are unsure of what use you intend to make of the copyright material or which licence you intend to distribute the content under, please refer to the section 4.1 'How will the material be used?'

It is helpful to include a form which the copyright holder can sign and return to you in order to secure permission in a format that can then be scanned and stored in a copyright management database.

If you are preparing a permission form, you could also include space for the copyright owner to nominate any additional details (if applicable to the permissions request) and any special conditions, licence fees, duration that may apply and any acknowledgement requirements.

4.1 How will the material be used?

Determine what licence will be associated with the content when it is shared via the Sharing Exchange, that is, what will you allow users to do with the content. Refer to section 5 for information about the types of licences that are available.

4.1.1 Who will you share the content with?

Determine your intended audience. Do you intend to share the content with all Australian education jurisdictions?

It is worth noting that the experience of ESA is that often copyright holders will grant permission for national non-commercial educational use. However, there tends to be a steep increase in the licence fee that is payable when a worldwide licence is sought or one that is sought for commercial purposes.

4.1.2 What can users do with the content?

The answer to this question needs to consider both the content created by your jurisdiction and any third-party material that is included with this content.

As you will be contributing content to the Sharing Exchange, we can assume you intend to share the material for non-commercial educational purposes.

You could allow users to:

- copy the content
- communicate the content to the public (for example by putting the content on a public website)
- modify and/or adapt the content (for example zooming in or out, cropping, changing colours).

4.1.2.1 **Types of modifications to content**

Do you want your material to be used in any manner or do you need to prohibit, for example, modifications being made (perhaps due to a restriction imposed by a third-party copyright holder)? The facility for teachers to actively interact with the content by making alterations for educational purposes is often preferred, particularly by those teachers who are preparing content for areas like Media Studies. However, you may find that some third-party copyright holders are not willing to grant permission for their work to be modified. This can arise with works that are fine art or Indigenous cultural materials, where for reasons of integrity, the copyright holder may require that the work always appears in its original form.

Sometimes third-party copyright holders grant permission for their material to be modified in an educational context when you describe to them what this may entail. It can assist to describe practical classroom scenarios, such as where a teacher crops and enlarges a detail of an artwork to focus on a painting technique employed by the artist. You may be able to think of other scenarios, perhaps some involving technology like interactive whiteboards, which equip teachers and students with tools to alter copyright material.

What about remixing? Can users actively engage with your material by re-contextualising and blending your material as a derivative work? Would you allow students or teachers to include the work in a fresh context for the purposes of education?

Would you like any 'derivatives' that are made to be shared back? If you are thinking about making sharing a requirement of your licence, consider what process you would like licensees to adopt in order to fulfil this condition. You should communicate these steps when your content is shared.

Are users free to share your material and any derivative works with others? Do you want others authorising a third party to perform certain acts (known as sublicensing)?

You may choose to describe for the sake of clarity what users are expressly **not** permitted to do.

4.2 **What period of time can the content be used for?**

You may wish to define how long the material can be used – indefinitely or for a specific duration.

While not all third-party copyright holders license their material for an indefinite period, you could seek this in the first instance. For digital content, placing a time limit on the period of use can be difficult in practical terms for the recipient jurisdiction to manage. Pragmatically though, for some content you may end up needing to negotiate a licence duration that works for all copyright holders involved (and as a consequence you would need to communicate this expiry date when the content is licensed in the Sharing Exchange).

If you find that a specific period of use needs to be set, consider how long the resource is likely to be relevant to educators for and whether there is anything else influencing the likely period of use, such as the shelf-life of any software required to use the resource.

4.3 Do you have any specific acknowledgement requirements?

Do you require that your material always be accompanied by an acknowledgement or attribution? If so, do you have any specific requirements regarding the acknowledgement that appears? Often this accounts for the copyright holder/s and author/s as a minimum, but you may wish to also seek citation of the resource's title and its unique identifier.

The Copyright Act requires authors to be credited when their material is reproduced. Unless you have obtained valid consents from authors **not to do so**, you will need to ensure that these attributions appear. For further information, refer to the information sheet 'Moral rights' on the [Australian Copyright Council's website](#) . Recipients of your content also need to retain these attributions whenever they use the work and ensure that they deal with the material in a manner that does not infringe any other of the author's moral rights.

If you are considering applying a Creative Commons or AShareNet licence to content in the Sharing Exchange, users are required to cite the specific licence the work is made available under and, if derivative works are permitted, often they are required to acknowledge this (for example 'This is a Maori translation of the [original work] by [author].')

If you choose to apply a licence such as Creative Commons or AShareNet to content that you wish to share in the Sharing Exchange, you must also consider if the content contains any third-party material and if that third-party material can be shared under such a licence.

5.0 Choosing an appropriate licence in the Sharing Exchange

After you have obtained all necessary rights and permissions to facilitate sharing your content in the Sharing Exchange, you need to communicate what terms of use are offered by selecting or creating a licence.

There are several licensing options available. You can:

- create a custom licence, for example an agreement that your jurisdiction has prepared
- use the Sharing Exchange licence (with or without special conditions applied) that was developed by ESA, or
- adopt a Creative Commons or AShareNet licence.

Important: Before applying a licence, make sure you check that you have obtained all necessary rights and consents from third-party copyright owners.

In addition to selecting an appropriate licence in the system, you are also prompted to associate *Conditions of Use* with the content. The intention of providing Conditions of Use with content is to express the licence terms in plain English for your intended users, who are likely to be teachers or students.

5.1 Creating a custom licence

In the Sharing Exchange there are no limitations placed upon the type of licence agreement that you can associate with your content. While there is the opportunity to choose an existing licence such as the Sharing Exchange licence or one from Creative Commons or AShareNET, you could also choose to create a licence record of your own, that is, a 'custom licence'.

If you are taking this approach, you need to create a document and then upload it to the Sharing Exchange. When creating the new licence record in the Sharing Exchange, you will be prompted to record a few basic pieces of information in relation to the licence, for example the duration of the licence.

5.2 The Sharing Exchange licence

The Sharing Exchange licence, which is offered as the default licence in the system, grants users a royalty free licence to use the content for non-commercial educational purposes in Australia. When this licence is used, jurisdictions and their schools are permitted to copy, download, communicate and display the content. Importantly, when copying occurs no payments need to be made to a copyright collecting society such as Copyright Agency Limited.

Content that is licensed under the standard Sharing Exchange licence cannot be modified or published to a public website. If you would like to permit such uses, you could still choose the Sharing Exchange licence and apply variations.

The Sharing Exchange licence has been structured so that you can vary the terms of the licence by including further text that allows you to add to or amend the licence. For example, if you would like to permit modifications, you could state as a variation 'Users are permitted to make modifications and adaptations'. Or you might agree to your content being used for **any** educational purpose, not simply non-commercial educational purposes. Again, in this circumstance, you could prepare a variation that clarifies this usage.

If you would like to vary the licence by applying special conditions, you can obtain further information by referring to *A guide to applying special conditions to the standard Sharing Exchange licence*. Contact the Acting Copyright and Permissions Manager at ESA for more information about how to obtain the document.

In choosing a licence that you consider relevant to your content, it is worth keeping in mind that an objective of the Sharing Exchange is to enable sharing of content between jurisdictions resulting in better use of resources, less duplication of educational material and a larger pool of quality educational content.

5.3 Adopting a Creative Commons or AShareNet licence

Creative Commons and AShareNet instant licences can be applied by anyone and are free to apply. It is essential that you understand how the licences work before applying them because once applied you cannot stop people using the material if they received the content under the terms of such a licence.

Before applying any of these licences you also need to be certain that you own the all the copyright in the content or have obtained all permissions from third-party copyright holders to permit you to offer out their content under the terms of the relevant licence.

A core principle of these licences is they provide a simple, standardised way to grant permissions for copyright works. The 'marks' allow you to clearly label and communicate to users the scope of the licence you are providing them in a manner that is increasingly recognised by members of the public.

5.3.1 Creative Commons licences

Access Creative Commons licences at the [Creative Commons website](#) .

These licences can be appropriate if you, and all relevant third-party copyright holders, wish to make the material available in perpetuity to the general public. You can't limit the audience, such as to Australian educational users only. Creative Commons licences attach to the work and authorise everyone who comes in contact with the work to use the work in a manner consistent with the licence.

The Creative Commons licences can be offered by any copyright owner by attaching the relevant mark to material they own.

The licences are expressed in three different formats:

- the Commons Deed (human-readable code)
- the Legal Code (lawyer-readable code)
- the metadata (machine readable code).

If you are considering using Creative Commons licences, we recommend you visit the [Creative Commons wiki](#)  where there is a list of items to think about for those new to Creative Commons licensing.

Once you are confident that you understand how Creative Commons licences operate, you can use an [online tool with links to view explanations](#)  for all Creative Commons licences to help you select the right licence.

Some of the Creative Commons licences are profiled in the table. This is not an exhaustive summary and you should visit [Creative Commons Australia website](#)  to find out more about the range of licences available.

Creative Commons licences		
Licence mark	Link to licence	Description
 Attribution	Attribution 3.0 Unported (CC BY 3.0) 	This is the broadest of the Creative Commons licences in terms of what others can do with the work. It lets others do anything they wish with the work, including copying, distributing, remixing and building upon it, even for commercial purposes, as long as they credit the original author.
 Attribution Share Alike	Attribution-ShareAlike 3.0 Unported (CC BY-SA 3.0) 	This licence is often compared to copyleft Free/Libre Open Source Software (FLOSS) licences. It lets others remix, distribute and build upon the work even for commercial

		purposes, as long as they credit the original author and license any derivative works under identical terms. All new works based on the original work must carry the same licence, so any derivatives must also allow commercial use and share alike remixing.
 Attribution Non-commercial No Derivative Works	Attribution-NonCommercial-NoDerivs 3.0 Unported (CC BY-NC-ND 3.0) 	This is the most restrictive of the core Creative Commons licences. It allows a work to be copied and shared with others, but only in its original form, for non-commercial purposes and where credit is provided to the original author.
 Attribution No Derivative Works	Attribution-NoDerivs 3.0 Unported (CC BY-ND 3.0) 	This licence allows use of a work in its current form for both commercial and non-commercial purposes, as long as it is not changed in any way or used to make derivative works, and credit is given to the original author.

5.3.2 AShareNet licences

Access AShareNet licences at the [AShareNet licences website](#) .

These licences are specifically for content relevant to learning and teaching, and have been developed from an Australian perspective.

As with Creative Commons licences, the AShareNet instant licences can be offered by any copyright owner by attaching the relevant mark to material they own. The material can then be used by anyone subject to the conditions of the licence. No transaction is required. The material can simply be used once the mark is applied to the content.

AShareNet also provides licence mechanisms for cost-recovery approaches, as well as options for obtaining a return on investment. An overview of the AShareNet licence options can be viewed on the [AShareNet Core Business website](#) .

Some of the AShareNet licences are profiled in the table. This is not an exhaustive summary and you should visit the [AShareNet website](#)  to find out more about the range of licences available.

AEShareNet licences		
Licence mark	Link to licence	Description
 <p>FfE – Free for Education</p>	http://www.aesharenet.com.au/FfE	<p>Material carrying this mark may be freely used and copied for educational purposes. It cannot be supplied to the public. Special conditions can be applied to this licence. The copyright owner may add additional (more restrictive) conditions of the licence by inclusion in the metadata. Licensees must then comply with any added conditions restricting the usual scope of the licence.</p>
 <p>U – Unlocked Content</p>	http://www.aesharenet.com.au/U4	<p>This licence permits material to be freely copied, adapted and used by anyone. Exact copies must retain the owners' copyright statement and the AEShareNet-U mark. However, enhancements may only carry the licensee's copyright statement. This licence is intended for use where the original owner does not require acknowledgement in further modifications and can be used, for example, for professional development materials to be adapted for the users own needs.</p>
 <p>S – Share and Return</p>	http://www.aesharenet.com.au/s4	<p>Material licensed under this mark may be used and enhanced by anyone free of charge but copyright in published modifications lies with the original owner (so there is only one licensor who can then maintain the material).</p>
 <p>P – Preserve Integrity</p>	http://www.aesharenet.com.au/p4	<p>This licence makes the material available to be freely copied but may not be modified and must retain the owner's copyright notice. AEShareNet</p>

AEShareNet licences		
Licence mark	Link to licence	Description
		suggests the use of this licence for materials such as curriculum documents, research reports and statistical information. According to AEShareNet it is suitable when material needs to be widely accessible but requires a single authoritative source.

6.0 National Educational Access Licence for Schools (NEALS)

NEALS is an agreement between the Commonwealth Department of Education, Employment and Workplace Relations (DEEWR), the state and territory education departments, and the Catholic and independent school sectors that allows schools to copy and communicate material from each other's websites and publications for educational use, free of charge.

With the exception of films and sound recordings, all material published by member schools, education departments, associations and dioceses (educational bodies) for educational purposes is automatically covered by NEALS unless expressly excluded. To find out more about NEALS, access the [Smartcopying website](#) .

7.0 Copyright and permissions checklist

This checklist provides a quick reference for jurisdictions that intend to share content via the Sharing Exchange. It summarises the main copyright and permissions issues that need to be dealt with, as identified in the *Sharing Exchange: copyright considerations prior to sharing content*.

1. Confirm copyright ownership and establish whether there are any additional permissions to obtain.

At the outset, you will need to identify whether copyright will be wholly owned by your jurisdiction and if so, ensure all agreements are in place to that effect. You also need to ascertain whether there is any material included from other copyright owners, including students, which requires copyright clearance.

2. Begin by scoping the licence that you plan to offer when the content is shared so that you can ensure all necessary rights will be secured.

The following questions may provide a basis for helping you choose the right licence or, alternatively, assist with preparation of your own custom licence:

- Who will you share the content with?

- What would you like to permit users to do with the content?
- What period of time can the content be used for?
- Do you have any specific acknowledgement requirements?

3. Prepare the letter for obtaining permissions from copyright holders.

At a minimum, the permissions letter should include:

- an accurate description of the copyright material that you wish to use
- a clear statement regarding the intended use of the material, which can be descriptive or refer to specific copyrights such as communicate to the public.

It is preferable to also include a form that the copyright holder can sign and return if granting permission. You may also include space for the copyright holder to nominate any additional details (if applicable to the permissions request) and any special conditions, licence fees, term (if not fixed or perpetual) that may apply.

4. Choose the relevant licence in the Sharing Exchange after all the necessary rights and permissions have been obtained in writing.

There are several licensing options available. You can:

- create a custom licence, which for example could be an agreement that your jurisdiction has prepared
- use the Sharing Exchange licence (with or without special conditions) that was developed by ESA
- adopt a Creative Commons or AShareNet licence.