

## Copyright Guidelines on Sound recordings for Teaching Sites

These guidelines describe the copyright compliance requirements for the use of sound recordings in online teaching sites, whether an audio recording of a lecture, a sound recording as a supplementary resource for students, or sound incorporated into an online course. They are addressed to academic staff, learning designers and other staff using QUT Blackboard or any other QUT system. **The guidelines assume that the website is restricted to QUT staff and students.**

Copyright consists of a bundle of rights that belong exclusively to the copyright owner. The key ones involved in the use of sound recordings in online teaching sites are the rights to:

- Reproduce the work in a material form; and
- Communicate the material to the public.

Making a recording of a live performance of a work is a reproduction of the work in a material form. This form of reproduction is called a 'mechanical' reproduction.

In copyright law, to communicate the work to the public means to make **it available online** or electronically transmit it. When you put material online, first you make another reproduction of it when you make a digital copy to put on the server, and then you communicate it to the public when the site is made available to students.

(For more background on copyright, consult the [General Information](#) section of the QUT Copyright Guide.)

There are usually at least **two layers of copyright** involved in dealing with a sound recording. Firstly, there is the record of the actual sounds captured. Secondly, there is the work that was performed and captured in the recording. For example, there are two separate copyrights involved in a recording of a poem – the copyright in the poem as written by the author, and the copyright in the sound recording. Usually, the separate copyrights are owned by different persons. For example, the poet owns the copyright in the poem while whoever makes the recording owns the copyright in the sound recording. In commercial sound recordings, the owner of the copyright in the sound recording is usually the record company.

If you deal with the whole or a **substantial part** of a work in any of the ways exclusively reserved to the copyright owner, without their permission, you will be breaching copyright, unless an exception or licence under the Copyright Act applies. What you are permitted to do under copyright law depends on the source and content of the sound recording. Audio material in an online teaching site can come from a variety of sources. The following discussion outlines out the copyright compliance obligations for various sources:

- Audio-recordings of lectures
- Pre-existing sound recordings
- Pre-existing films and videos.

### Audio-recordings of lectures

Lectures can be very complex in terms of copyright. According to the QUT [Intellectual Property Policy](#), the University owns the copyright in teaching materials produced by QUT staff in the course of their employment.

The simplest situation is where **QUT lecturers use only their own words**, both in spoken delivery and in the text on any slides, only **their own musical compositions**, only **visual material they have created themselves**, and all the spoken words, live music, written text, and visuals were created in the course of their employment with QUT. In this situation, QUT owns the copyright in the words or music that were presented and so is free to capture them in the sound recording and to make it available online. They can be made available for listening only or for download. The site should be restricted to QUT staff and students only, as the University usually does not open its lectures to the public.

If the lecturer uses material created by other QUT staff in the course of their employment, the same situation applies.

However, this simple situation becomes complicated as soon as the lecturer uses material in which the copyright is not owned by QUT. Some examples of **non-QUT material** that might be captured in an audio-recording of a lecture are:

- sound recordings played during the lecture
- films or videos screened during the lecture
- lecturer or student performing a musical, dramatic or literary work
- prepared talk given by a guest lecturer or a student

Once the lecture includes non-QUT material, **copyright owner permission** must be obtained to (a) make a recording of the material and (b) put it online. The only exceptions to this general rule are certain uses that are permitted by the Copyright Act and certain uses covered by existing licence agreements between the University and the copyright owners.

A **permission form** for use when you want to make a recording of a talk by a **guest lecturer** is at the end of these guidelines.

The **recording of live performances** of published musical works and making such recordings available online for educational purposes may be covered by the Tertiary Music Licence. For further guidance, consult the section on [recording live performances](#) in the QUT Copyright Guide.

The capture of **pre-existing** films, videos or sound recordings is discussed later in these guidelines.

In addition to pure copyright issues, the audio-recording of lectures requires the consideration of other matters. These are discussed later.

### **Pre-existing sound recordings**

You may be interested in providing a pre-existing sound recording as a supplementary resource for students; or incorporating sound into an online course; or the audio-recording of your lecture may have captured the playing of a pre-existing recording. The information that follows assumes that any sound recording you wish to use has been made or obtained in a way that complies with copyright and performers' rights. It is against QUT policy to use infringing recordings. Copyright compliance for certain types of recordings is summarised as follows, on the assumption that the **site will be restricted to QUT staff and students**.

**Copies of radio broadcasts:** These may be copied and made available online by QUT for its educational purposes under the statutory licence (Screenrights Agreement). They can be for listening or for download. They may be copied from audio files of broadcasts made available on the broadcaster's website (often called 'podcasts') or from 'off-air' recordings made by QUT. For more information on warning notices and other conditions, consult the section [TV and radio](#) in the QUT Copyright Guide.

**Published music recordings:** A vast repertoire of published music recordings may be copied and made available online by QUT for its educational purposes under the terms of the Tertiary Music Licence. The recordings must be for available listening only, not for download. For more guidance, consult the section [Music recordings](#) in the QUT Copyright Guide.

**Production music and sound effects:** These sound recordings are copyright cleared for use in media productions but licence fees have to be paid. TALSS TV subscribes to collections of them for use in QUT productions. Licence fees are recovered from the user department.

**Creative Commons licensed audio:** These audio files are made available by their copyright owners for free use for non-commercial purposes such as teaching. There is an online service to help you find them at the [Creative Commons Search](#) website.

**QUT produced sound recordings (other than music or lecture recordings):** These made be made available online if QUT obtained permission to do so from any other copyright owners whose material is incorporated. (Music and lecture recordings are discussed above.)

**Student produced sound recording:** Permission from the student must be obtained if the student is not the person who uploads the file. Students should be warned not to upload files that might infringe on the copyright of others. You should be careful not to upload student productions that might infringe on the copyright of third parties. Students who upload their own versions of other people's music as part of their studies at QUT may be covered by fair dealing provisions of the Copyright Act. Lecturers who make them available for the educational purpose of QUT may be covered by the Tertiary Music Licence. Contact the University Copyright Officer for further guidance.

### **Pre-existing films and videos**

The audio-recording of your lecture may have captured the sound of a film or video that was screened in the lecture. Capturing the sound of a published film or video requires the permission of the copyright owners.

If the video played was a recording of a television broadcast made under the statutory licence (Screenrights Agreement) in the Copyright Act, capturing the sound in the lecture recording is permitted. It may also be made available online for listening or for download. For more information on warning notices and other conditions, consult the section [TV and radio](#) in the QUT Copyright Guide.

### **Permissions from copyright owners**

When you contact copyright owners for permission to use their sound recordings in an online teaching site, be very precise about exactly what you want to copy and how you wish to use it. Copyright owners are under no obligation to give permission or even to reply to your enquiry. They may also expect payment. Give yourself plenty of time as the permissions process can be long and fruitless. For help in drafting a request for permission or advice on other options, contact the University Copyright Officer.

### **Moral Rights Issues**

Moral rights are separate from copyright. The moral rights in a work belong to the author or creator, even when the copyright belongs to someone else. Authors have the following moral rights granted by the Copyright Act:

- The right of attribution – a work must be correctly attributed to the author;
- The right not to have authorship falsely attributed; and
- The right of integrity – a work cannot be modified in such a way that it damages the author's honour or reputation.

Moral rights are granted to authors of literary, dramatic, musical and artistic works, and cinematograph films. Although sound recordings in themselves do not attract moral rights, the authors of the works embodied in the recordings have moral rights.

In making a sound recording available online, care should be taken to attribute the various authors involved. The Act states that an identification of the author of a work must be clear and reasonably prominent. Sound recordings and other copyright material reproduced on a QUT website therefore must have complete, correct citations. However achieved, they must be done in such a way that a person listening to the lecture or course module will have notice of the authors' identities.

Referencing material in an acceptable academic style will satisfy the attribution requirement.

Music recordings made available online under the Tertiary Music Licence must be labelled in the prescribed way. For details, consult the section [Music recordings](#) in the QUT Copyright Guide.

There are some defences to failure to make an attribution: if it was reasonable under all the circumstances not to identify the author, or if the author had consented in writing to not being identified. One factor in determining whether an action is reasonable is relevant industry practice. For more information consult the guideline Moral Rights available from [Plagiarism and moral rights](#) in the QUT Copyright Guide.

## Manipulation of sound recordings

Using a copied sound recordings as raw material to create a different work, by inserting your own material or modifying the content, might raise questions of moral rights. The moral right of integrity requires that the work of the author not be modified, distorted, or treated in some other way to the prejudice of the author's honour or reputation. Not every change to, or treatment of, an author's work will be an infringement of their moral right of integrity. For infringement to occur, the treatment must be prejudicial to the author's honour or reputation. As with failure to attribute, there are some defences to derogatory treatment of a work, such as reasonableness and author consent. For more information consult the guideline Moral Rights available from [Plagiarism and moral rights](#) in the QUT Copyright Guide

## QUT staff issues

According to the QUT [Intellectual Property Policy](#), the University owns the copyright in teaching materials produced by QUT staff. In the case of a recording of a lecture, QUT will own the copyright in the recording and arguably also in the underlying intellectual content as expressed by the lecturer and reduced to a material form in the recording. As owner of the copyright, QUT does not need permission from the staff member to continue to use the recording even if the staff member leaves QUT. However, the moral rights remain with the lecturer as the author.

## Talent release, performers' rights and audio-recording lectures

"Talent release" is not strictly a copyright matter. The Copyright Act gives some limited protection to 'performers'. Generally, it is necessary to get the performer's consent to record or broadcast a live performance. Performers who contribute to the sounds embodied in a sound recording also get a share in the copyright in the sound recording under certain conditions.

Not everyone who is the subject of a recording is a 'performer'. Under the Copyright Act, performers have rights in relation to performances of musical, dramatic and literary works, and circus or variety acts. Excluded from the definition of 'performance' are: reading the news, performing a sporting activity, performances by members of audiences, **and certain performances by teachers and students during educational instruction**. Consequently, even though it might be argued that a lecturer in delivering a lecture is giving a performance of a literary work, the performance would attract no performer's protection under the Copyright Act. Therefore, there is no requirement under the Copyright Act that the lecturer give permission for making a recording of their delivery in their role as a 'performer'. Nor is it necessary, under the Copyright Act, to get permission from students to record their participation in the lecture.

If a student performs a work of their own creation during instruction, for example, their own piece of music, the actual work has copyright protection and permission needs to be obtained from the student as the author to record and communicate the work.

If a guest gives a performance that is recorded, permission to record the performance should be obtained from the performer. In the case of a guest delivering a lecture, you can use the permission form attached to obtain both copyright permission and performer agreement. This permission does not transfer the copyright in the guest's words or share of the copyright in the sound recording to the University. Music is a particularly complicated area and if you intend to record a guest composer or musician, you need to discuss these matters of copyright and performers' rights in advance. There is a permission form for use, [here](#).

If an original sound recording is being commissioned for your website, not just an audio-recording of a lecture, more wide-ranging talent releases will be appropriate; but that is beyond the scope of these guidelines.

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