

Copyright Frequently Asked Questions for The Le@rning Federation digital resource project

The information contained in these FAQs is not intended to be a substitute for you obtaining independent legal advice. If you rely on any of the information in these FAQs, you are responsible for ensuring by independent verification its accuracy, currency or completeness.

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To find out more or to raise a question of your own please contact The Le@rning Federation’s IP Manager at ipmanager@thelearningfederation.edu.au or phone +03 9657 9753

The Le@rning Federation is an initiative delivered on behalf of the Australian Education Systems Officials Committee (AESOC) by Curriculum Corporation.

What is copyright?

Copyright is a type of property that is founded on a person's creative skill and labour. It is designed to prevent the unauthorised use by others of a work, that is, the original form in which an idea or information has been expressed by the creator.

(Definition taken from CCA website, <http://www.ag.gov.au/cca>)

How can I tell who the copyright owner is?

This can be difficult, but in most circumstances the person who created the content will be the copyright owner. A common exception to this rule is where the creator is an employee who created the content as part of their employment, though this exception does not apply to freelancers, volunteers or employees of newspapers or magazines.

Copyright can be assigned by the creator to other individuals or organisations.

Bear in mind too that there may be multiple copyright owners to take into consideration for a single item of content. Film is a type of content where a number of rights arise.

How long does copyright last?

Copyright duration laws vary depending on the type of material in question. For instance, the copyright in an artwork would have expired if its creator died before 1 January 1955, but if the work was still in copyright following that date it remains in copyright for the life of the creator plus a further 70 years following their death.

The Australian Copyright Council information sheet on copyright duration ('Duration' - G023) provides a useful table to consult that outlines the general rules for different types of materials. It is available via their website, <http://www.copyright.org.au>.

What are moral rights?

Creators of copyright works and films also have a number of non-economic rights. These are known as moral rights. They are a separate right to the economic right of a copyright holder. The term 'moral right' derives from the French *droit moral*. Moral rights recognised in Australia are the right of integrity of authorship, the right of attribution of authorship and the right against false attribution of authorship.

(Further information on Moral Rights is available from the Commonwealth Copyright Administration website, <http://www.ag.gov.au/cca>)

Can an organisation have moral rights?

No, moral rights only apply to individuals.

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Can creators assign their moral rights to another person?

No, unlike copyright, moral rights cannot be assigned to another person.

How long do moral rights last?

For moral rights the same duration rules apply as those that apply to the duration of copyright.

It is Curriculum Corporation's practice to acknowledge key creators where they are known, regardless of whether their moral rights are still current or have expired. This information is included in the 'Acknowledgements' which accompany the asset and is significant to the learning experience and overall package that is a digital resource.

What is an 'unpublished work'? How do the copyright rules differ in this scenario?

An unpublished work is defined by the Australian Copyright Council as 'a work [that] was not published, performed or broadcast during a creator's life' (An introduction to copyright in Australia, information sheet, ACC, 2007).

We often come across older works from institution archives, be they letters or manuscripts, where it is presumed that the work is out of copyright because of its age. Unfortunately, if the item was not made public during the creator's lifetime the copyright duration clock has not started ticking and the item can remain in copyright indefinitely.

What if the copyright holder is deceased?

If the copyright holder is deceased, copyright is usually owned by that person's immediate family. In Australia it can be helpful to contact the Probate Division of the Supreme Court in the state that the creator died if you need assistance determining who has inherited copyright ownership.

In the case of unpublished works, the person that inherits the manuscript also inherits the copyright in the work unless there is an agreement to the contrary.

How can I explain The Le@rning Federation initiative to a copyright holder that I am contacting?

The Learning Federation (TLF) is a collaborative initiative of the state and federal governments of Australia and New Zealand. The initiative is managed by Curriculum Corporation (www.curriculum.edu.au). TLF develops innovative high-quality online curriculum content, which is designed to engage students and support teachers. This content is available to all schools and education systems in Australia and New Zealand.

You should highlight that your organisation is working with TLF to provide a selection of digitised assets from its collection to distribute to Australian and New Zealand education systems for use in teaching and learning. The published resources consist of single items of

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content, such as a section of moving image footage, a cartoon, a speech, a song, or a photograph, and an educational value statement.

This content is published in a digital repository known as the Exchange and is then made available to authorised users only within the Australian and New Zealand education systems, for use by students and teachers for non-commercial educational purposes.

Occasionally content is used for promotional purposes. Refer to the FAQ below.

In what other way might the content be used?

From time to time TLF includes content in promotional materials made available in printed and electronic formats. An example of this kind of use is when TLF includes content within the 'Showcase' section of its publicly accessible website (www.thelearningfederation.edu.au).

We have not been able to make contact with the copyright holder despite considerable efforts. If we can demonstrate the lengths we've gone to, is this sufficient?

Unfortunately, unless there is an exemption that you can rely on in the Copyright Act, use of another person's copyright material without permission will infringe their copyright, even if you have made reasonable efforts to locate them. Contact Curriculum Corporation first before relying on an exemption because, as a general rule, we operate on the assumption that we need to obtain licences to use all third party copyright works, given the nature of the TLF Initiative.

An untraceable copyright owner is certainly an issue that occurs when clearing permissions, but you need to remember that if you are licensing an item to Curriculum Corporation for use by the TLF Initiative, you are warranting that you are entitled to grant the licence.

I have spoken to the copyright holder and they have no problems with their content being used. Is their verbal consent enough?

No. Permission needs to be secured in writing in order to avoid any confusion or misunderstanding, It is best therefore to ensure that all relevant rights sought are outlined in your permission requests to third party copyright holders and that there is a signed consent to those terms. This paperwork is significant and provides the assurance that Curriculum Corporation is able to supply the content through the TLF Initiative to education users, with the confidence that they will be able to use the content in classroom settings (as per the permission granted) without infringing copyright.

What rights information is communicated to users of TLF content?

TLF digital resources are made available to authorised users within the Australian and New Zealand education systems, for use by students and teachers for educational purposes only. The content cannot be made publicly accessible by users.

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All digital resources are supplied with a “Conditions of Use” statement. This is a summary of what users can and can’t do with a resource. It appears as a link in the footer of every resource. The special conditions associated with the use of third party content are specified within this statement.

What acknowledgements are included?

All digital resources are accompanied by ‘Acknowledgements’ that display the copyright and moral rights associated with the asset. For example, we include the acknowledgement specified by the copyright owner here and list the creator(s) associated with the asset. There is space to credit some other parties, such as the individual or organisation that gifted the item to a cultural institution collection.

Why does Curriculum Corporation require a sub-licence to be granted for all content?

As is shown below, there is a chain of licensing that occurs in order for Australian and New Zealand schools to receive TLF content.

TLF content is not sold or supplied in the usual manner. Curriculum Corporation has put in place licence agreements with State Departments of Education, as well as various other peak bodies representing the independent schools sector, in order for copyright materials to be used by schools at no cost, under certain conditions.

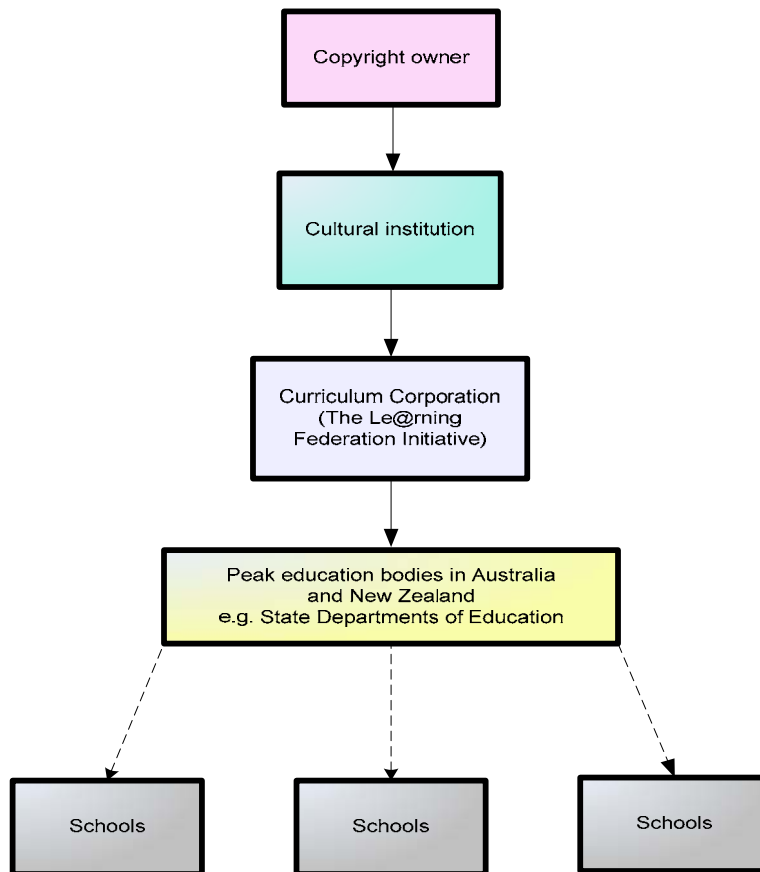
The sub licence is limited in scope. For content that it has not created (that is, content in which the copyright is owned or controlled by a third party such as yourself and licensed to Curriculum Corporation), Curriculum Corporation *only* grants licences to Australia and New Zealand education systems for non-commercial use.

On the next page is a diagram that shows the chain of licensing that occurs in order for Australian and New Zealand schools to receive TLF content.

Please see over page for diagram

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Above: Diagram showing chain of licensing that occurs in order for Australian and New Zealand schools to receive TLF content

What other rights does non-commercial educational use include?

Check your licence agreement with TLF for a definitive list of the rights that you need to secure from copyright holders, but typically you will be required to obtain permission from copyright holders to use, reproduce, distribute, communicate, modify, adapt, upload and download the material for non-commercial educational purposes.

These rights facilitate the classroom use of an item – where an item may be copied and reproduced within a worksheet, uploaded to a secure school intranet or copied to a CD or DVD for use at home. When these uses occur no monies are payable to copyright holders by Copyright Agency Limited (CAL) because a licence has been put in place that permits the materials to be used for educational purposes.

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Will the content be distributed via the TLF website?

No – in most circumstances, as is illustrated in the prior FAQ, content is *not* distributed via the TLF website. In fact, the only time when content is made available on TLF's publicly accessible website is for limited promotional reasons.

Apart from that circumstance, content is distributed by Curriculum Corporation *only* to education bodies in Australia and New Zealand. This primarily occurs via a restricted-access repository (or portal) which is known as the Exchange. Authorised users access and download the content in the Exchange, and most government and independent authorities then make the content available to students and teachers within their own restricted-access portals.

One such portal is TaLe in NSW which is the Teaching and Learning exchange for government schools (<http://www.tale.edu.au/>). Teachers and students need to login before they are able to view TLF content. Portals such as this operate in every state and territory.

There are also times when content is distributed to students and teachers on CD-ROM or DVD. For schools that have bandwidth issues accessing the internet, this is an important method for accessing TLF content.

Is the content only used in electronic format?

Students and teachers who use TLF content are permitted to copy and print material in hard copy form. In the classroom they may reproduce the content in a printed worksheet to facilitate learning activities.

When reproducing the content teachers must ensure that the copyright material is correctly attributed and acknowledged. TLF is focussed on educating teachers and students on compliant use of copyright materials and the importance of respecting creators' moral rights.

Will copyright owners receive remuneration under Part VB of the Copyright Act?

No, copyright owners will not receive ongoing remuneration for copying by education institutions under the statutory licences administered by Copyright Agency Limited (CAL).

Educators that use TLF content are permitted to make copies at no cost. On behalf of educators, cultural institutions need to obtain copyright owners' permission for copies to be made freely by Australian and New Zealand schools.

All TLF material is CAL-exempt. Therefore you must ensure that copyright owners have consented to the rights reflected in your licence agreement with Curriculum Corporation, specifically the right for copies to be made by your sub-licensees with no further payment.

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What file format will the content be made available as?

The item of content is distributed as a low resolution or compressed file and only made available to an educational audience within Australia and New Zealand. For example, an image is only published through the TLF Initiative at a maximum of 72 dpi.

From a copyright holder's perspective, the provision of such files is a positive because the low-resolution format acts as a kind of technological protection measure. For example, commercial publishers of printed works, such as books, require high-resolution files for reproductions.

From this perspective, the format that we employ restricts the types of uses possible and thereby reduces certain risks.

A copyright holder will grant permission but has stipulated some special conditions. How should I approach this situation?

When a copyright holder grants permission for use of their material but sets conditions of their own, there are several things you need to consider before accepting those terms.

Firstly, you will need to evaluate the copyright holder's requirements against your agreement with TLF. When doing this you will need to consider whether the requirements of the copyright holder would constitute a variation to those terms your organisation has entered into with TLF.

You will need to contact the Permissions Officer at TLF to advise them of the situation. This is important because you need to ensure that TLF and its licensees are able to fulfil the copyright owner's requirements.

If the copyright holder's requirements can be agreed to, TLF will confirm in writing with you that the IP clauses of the agreement have been varied for the specific item.

One of the items selected for the project features the image of a deceased Indigenous person. What are the considerations in this scenario?

Curriculum Corporation values Indigenous cultures and supports the heritage rights of Indigenous communities.

We recognise the need to be aware of sensitivities around publishing material that contains references to deceased Indigenous persons and material that contains subject matter that may be of a secret or sacred nature. In such situations, please consult with the relevant community before supplying the material to us.

We acknowledge that the partner institutions we work with will have their own set of protocols for dealing with Indigenous content and encourage open dialogue on issues arising in regard to publishing this content.

Content where these considerations have been taken into account will, if published, be distributed with a warning to alert users to the fact that the resource contains references to an Aboriginal or Torres Strait Islander who may now be deceased. This alert appears before a user is able to view that piece of content.

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What is the 'Showcase' section of TLF's website?

The online Showcase is used to promote TLF content and our partnerships with key cultural organisations. This content is regularly changed and generally made available for short periods of time. Other promotional uses, such as inclusion of a graphic in an education journal article to highlight TLF's work, occur sometimes too.

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