

Enhanced use of the collection

For public good uses of copyright material that don't fall within a specific exception, you may be able to do things with permission or under the flexible dealing exception. Flexible dealing may cover uses such as use of orphan works, digitization, format shifting, translation, remixing or running children's story time

The exception for when no other exception applies (s200AB)

The Copyright Act contains a provision (s200AB) which is designed to add flexibility to how certain socially beneficial users can make use of copyright material. The users include educational institutions, libraries and archives and institutions assisting a person with a disability. The provision is described as flexible because allows any type of use in any situation that passes the basic test.

Libraries can use this exception for the purpose of maintaining or operating the library or archives. Educational institutions, including their libraries/archives, can use the provision for the purpose of educational instruction. Anyone or any institution can use the exception to make materials accessible to a person with disabilities.

If your use falls within these purposes, then the additional requirements for using the flexible dealing provision are:

- no other exceptions apply
- the use is non-commercial
- the use will not prejudice the copyright holder
- the use will not compete with, or take profit from, the copyright holder
- the use is a special case.



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Flexible dealings are judged on a case-by-case basis. Whether something is allowed will depend on all the questions above. However, permitted uses *might* include use of orphan works, digitization, format shifting, translation, remixing, children's story time

We understand that the provision can look daunting at first glance, and so we strongly recommend that you read through the ALCC's [flexible dealing handbook](#) for a more detailed look at the provision and a number of case studies.

Open licensing and GLAM

Strategic use of open licensing can enhance the value of the library or archive collection and its usefulness! There are two major points at which you should be considering open licensing.

When you make your works available

Releasing works under an open licence ensures that they can be used in the widest way possible. As well as ensuring the use, reuse and discovery of the collection, proactively making works open (available, discoverable and reusable) also promotes the institution. There are a number of excellent case studies you can look to, from Australian institutions such as the [Powerhouse Museum](#) to international successes like the [Rijksmuseum](#).

Obviously not all of the library or archive collections can be released as open access as the bulk of the collections will be protected by copyright that the institutions don't own. Creative commons has a [package of resources](#) available on the GLAM sector and open licensing, including a handy open archives document with [step by step processes](#) you can take to increase the openness of the collection.

When you need resources

Many times using open resources (such as public domain photos) to illustrate social media or put in reports will be the best idea. However should there not be appropriate public domain items in the collection (for example recorded music) there are [millions of resources](#) that you can freely use as long as you abide by the terms of the [licences](#).

Use of social media

Social media is governed by the same copyright rules as other actions. While there are no specific library or archive exceptions for social media, the [fair dealing](#) exceptions for review may be particularly useful, as well as s200AB.

Some useful tips for libraries wishing to make use of social media tools:

- If you want the material to be shared widely it is better if you can use public domain or openly licensed materials, and make it clear that they can be shared
- Often embedding or linking to a source is an easier way to attribute material (as required by [moral rights](#)) than a textual attribution, especially on social media platforms with character limits such as twitter.
- Content you place on platforms will be governed by the terms of use of each platform. If the platform is based in the USA (such as Facebook, Twitter and Instagram) then copyright infringement may be dealt with under the DMCA notice and takedown procedures.

FAQs

We have a manuscript from a prominent local citizen in our collection. The man died a number of years ago, leaving no children. We have tracked down one of his nephews who has given us permission to digitise the item and publish it online, but he wasn't sure if he actually held the copyright. We've been unable to track any other relatives. Can we use the item?

As an unpublished work, the manuscript will still be in [copyright](#). Without going through the wills and estates you can't be sure if the nephew does hold copyright or not. If he doesn't, then he cannot give you permission (you can't give permission to use something that you don't hold the rights to). However, in these circumstances you would have a good case that making the manuscript available is covered under the [flexible dealing exception](#).

I want to use an extract from a work in a publication. I cannot locate the copyright holder at all. Can I use it?

If the extract is [insubstantial](#) then it won't be an infringement to use it. If it is substantial you may be able to use it under s200AB, as long as the use was non-commercial for the purposes of the library or archive and fulfilled the [other](#)

[requirements](#). An example of an article that might be written for the purposes of the library or archive may be one that explained parts of the collection to the public or added valuable context to an archive's digitization program.

We have a video shot by the local primary school which we'd like to put online. We have permission to put the video online except for the music, which belongs to a large publishing house which is asking for a licence fee we can't afford. Would it be okay to publish the video without the soundtrack?

As long as you have permission from the other copyright holders, there will be no copyright issue with uploading the video without music. You may wish to ensure that you have written permission from the producer to avoid a claim of infringement of moral rights and ensure that you abide by any privacy regulations. You may wish to redub the video with different music. For example, [Creative Commons](#) can help you find a wide variety of music that can be freely used under its licences

Further resources

[S200AB: When can it be used?](#) Australian Copyright Council

[S200AB: when can it apply, Museum and Galleries FAQs](#) Australian Copyright Council
[Galleries, Libraries, Archives and Museums](#) Creative Commons Australia

[Copyright. Legal Issues and Takedown](#) National and State Libraries Australasia

[Translations and Copyright](#) Australian Copyright Council

[Orphan Works](#) Australian Copyright Council

The [Australian Libraries Copyright Committee](#) is the primary policy body for the discussion of copyright issues affecting libraries and archives in Australia. For more information and resources on copyright for libraries, including regular training opportunities throughout Australia, see <http://libcopyright.org.au>.