

Copyright

Translations possible under the Copyright Flexible Dealing Exception

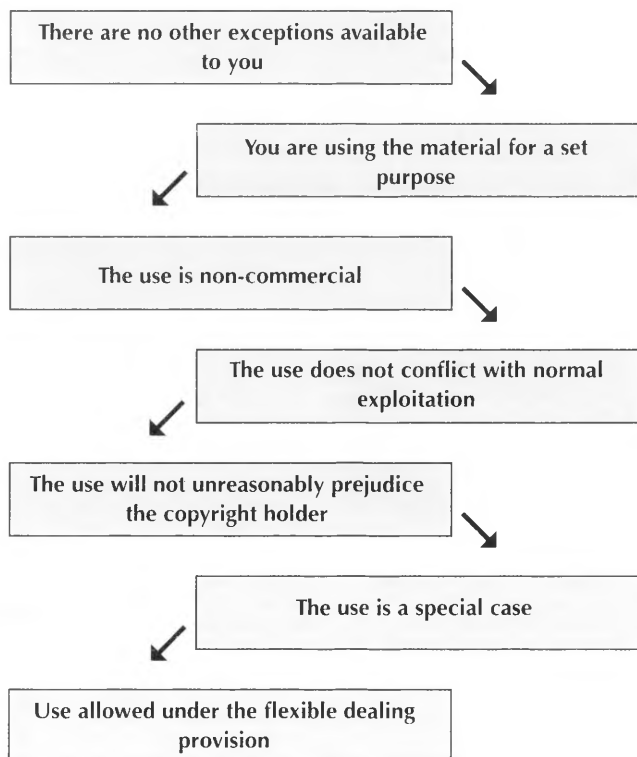
Section 200AB was introduced through the Copyright Amendment Act 2006 (Cth) with the aim of providing a "flexible exception to enable copyright material to be used for certain socially beneficial purposes, while remaining consistent with Australia's obligations under international copyright treaties". This provision applies to libraries, archives and educational institutions, as well as people and institutions assisting those with a disability, and is intended to operate like fair use.

This flexible dealing provision will be particularly helpful to libraries in cases where their proposed use of copyright material falls outside other specific exceptions, such as fair dealing or library preservation provisions.

A public library has a special collection that is intended to strengthen Indigenous people's English and information literacies. The library wants to translate popular children's stories into local languages and produce in-house bilingual versions of these stories. Items in this collection are free and available to all but not for loan.

Yes. The library can use the flexible dealing provision for this purpose.

Steps to take when deciding to if you can use the flexible dealing provision



Looking at the steps for the example in detail shows that some variations in use could affect the availability of the flexible dealing provision.

Working through the example of translating children's stories

There is no other exception. Copyright holders have the right to control adaptations of their work, so to make these translations, the library needs an exception or permission from the copyright holder. There are no exceptions that apply, so the flexible dealing provision is open to them.



Helen Roberts
ALIA Copyright Advisor

For the purpose of maintaining or operating the library. This step is worded broadly to include any use for the purpose of operating the library. The Explanatory Memorandum for this step states that this encompasses providing services to users. The library's intended use in this case is clearly a service offered to users.

The use is non-commercial. This means you cannot use the flexible dealing provision if the use is partly or wholly for the purpose of commercial advantage or profit. The library has no problems at this step. The provision specifically states it is acceptable to charge a cost-recovery fee.

An example of a use that would not comply with this step would be if the library decided to commercially produce these translated stories.

The use does not conflict with normal exploitation. The library would only have problems satisfying this step if:

- the copyright holders offered translations in the local languages for sale (then the library would be denying copyright holders their profits)
- the copyright holders commonly receive income through licences for this type of adaptation/translation.

If in doubt about whether the copyright holder commonly offers a licence, the library could contact the copyright holder or publisher for further information.

The use will not unreasonably prejudice the copyright holder. In this example, the library has already proposed taking a number of measures that will minimise any prejudice to the copyright holder. It will not be charging any money, and is confining access to the materials to the library's premises. The library could also make sure it includes proper attribution on the translated versions (for example, author, artist, or original publisher details).

The use is a special case. Considering the earlier steps and the scenario, this looks to be a special case: it is a non-commercial, socially beneficial activity that would not be possible under other exceptions. The library has also clearly taken steps to ensure the use of the material is appropriately limited.

More Information

ADA / ALCC Flexible Dealing Handbook

The Australian Digital Alliance and the Australian Libraries Copyright Committee have released a handbook which contains an outline of how they believe each of the steps of the provision should be approached. They then work through a number of possible scenarios to illustrate how s200AB might work in practice. The handbook is now available at <http://www.digital.org.au/alcc/resources/documents/FlexibleDealingHandbookfinal.pdf>

Copyright Act 1968 (Cth) s200AB

http://www.austlii.edu.au/au/legis/cth/consol_act/ca1968133/s200ab.html

Helen Roberts
ALIA Copyright Advisor
helen.roberts@alia.org.au