



FIJI LIBRARY ASSOCIATION

Copyright Guidelines for Libraries in Fiji

Produced by
Kathy Moore
on behalf of the Fiji Library Association



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COPYRIGHT GUIDELINES FOR LIBRARIES IN FIJI

These guidelines provide information on copyright concepts and on certain provisions of the Fiji Copyright Act 1999. They are intended for use by libraries and library staff in Fiji.

If further information is needed, librarians should consult the Act at <http://documents.ag.gov.fj/copyrightAct1999.pdf> or approach their legal advisers for more detailed explanation.

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Contents

1. INTRODUCTION	4
2. COPYRIGHT POLICY.....	4
3. HISTORICAL BACKGROUND TO COPYRIGHT	4
4. FIJI COPYRIGHT ACT 1999 ("the Act")	5
4.1 PRESCRIBED LIBRARIES AND ARCHIVES (S48)	5
4.2 COPYRIGHT (S16)	6
4.3 COPYRIGHT WORKS (S14)	6
4.4 OWNERSHIP OF COPYRIGHT (S21).....	7
4.5 DURATION OF COPYRIGHT AND THE PUBLIC DOMAIN (Ss22-26).....	8
4.6 COPYRIGHT INFRINGEMENT (Ss29-39).....	8
4.7 INFRINGEMENT PENALTIES (Ss109-113, 115, 121).....	9
4.8 COPYING (S30(2)).....	10
4.9 PERMITTED ACTS OR COPYRIGHT EXCEPTIONS	10
4.9.1 Fair dealing (Ss40-42)	10
4.9.2 Educational Exceptions (Ss44-47).....	10
4.9.3 Copying by librarians for individuals for research and private study (Ss49,50) ..	11
4.9.4 Copying for supply to other prescribed libraries (S51)	12
4.9.5 Replacement copies of works in collection (S52).....	12
4.9.6 Copying unpublished works (S53)	12
4.9.7 Rental rights (S73)	12
4.9.8 Performance (S69).....	12
4.9.9 Miscellaneous exceptions.....	13
4.10 COPYING FOR VERTICAL FILES	13
5. MULTI-MEDIA RESOURCES AND LICENSING.....	13
6. CREATIVE COMMONS LICENCES	14

1. INTRODUCTION

- 1.1 Librarians, information managers and all staff employed in libraries have a professional responsibility to provide services within a legal and ethical framework. It is important that they are aware of copyright and their obligations under copyright law. All libraries should ensure that a copy of current copyright legislation is held in their collection.
- 1.2 Copyright is a significant issue for libraries. It provides protection for the wide range of creative works held in a library's collection: published and unpublished literary, academic and artistic works, electronic databases of scientific and technical articles, music in sheet or book form, sound recordings, musical CDs, film, broadcasts and works communicated online.
- 1.3 Copyright legislation protects the rights of the creators to earn a living from their works but ensures an appropriate balance between those rights and the public good by making provision for certain fair dealing uses of the works by individuals and libraries.
- 1.4 These Guidelines will give library staff a better understanding of copyright laws and enable them to establish appropriate Copyright Policies and Procedures.

2. COPYRIGHT POLICY

- 2.1 Libraries need to ensure that all staff are familiar with their obligations under copyright law.
- 2.2 To avoid exposure to the risk of copyright infringement and to ensure that staff can respond to queries that relate to copyright issues, libraries need appropriate Copyright Policies and Procedures in place that will enable library staff and users to meet their legal obligations, prevent (and rectify) unlawful use of copyright material and promote a positive, ethical and copyright compliant culture. Procedures need to be established for the use of all works in the library's collection that will ensure copyright compliance. These Guidelines will assist in the preparation of such Policies and Procedures.
- 2.3 Libraries that provide computers, photocopiers, scanners and printers for users to download, print, scan or copy copyright material should encourage copyright compliance by providing information on copyright by means of prominent notices. An example of such a notice is attached in Appendix 1.

3. HISTORICAL BACKGROUND TO COPYRIGHT

- 3.1 Copyright law was first established in England in the 18th Century in response to the monopoly held by printers who controlled the printing of written works. In 1710, the Statute of Anne was enacted to reduce their hold and recognise the rights of authors to control the publication of their work. Authors were given that right for a period of 14 years from the date of first publication. The stated purpose of the UK Act was "for the encouragement of learning".
- 3.2 Increased international trade in published works led to the development of the Berne Convention for the Protection of Literary and Artistic Works (1886).

- 3.3 The Berne Convention provided a basis for recognition of copyright between different countries and established the principle of National Treatment to ensure that foreign authors (and their works) were treated in the same way as domestic authors in member countries. It also provided standard rules which countries could use to develop copyright laws and exceptions. (Fiji, Samoa and Tonga have acceded to the Berne Convention.)
- 3.4 The development of the photocopier in the 1960s and digital technology over the last twenty years has led to a lot of unauthorised and illegal copying of copyright works which has made it difficult for governments to provide copyright laws that keep pace with ongoing technological development.
- 3.5 The TRIPS (Trade Related Aspects of Intellectual Property Rights) Agreement (1994) had a huge affect on copyright law internationally because it recognised the commercial importance of Intellectual Property and established minimum standards for the protection of copyright and other intellectual property rights for countries that were members of the World Trade Organisation (WTO). It supported the three step test provided in the Berne Convention to limit fair dealing exceptions to "certain special cases" which did not "conflict with the normal exploitation of a work" or "unreasonably prejudice the legitimate interests of the rightsholder". (Fiji, the Solomon Islands and Tonga are members of the WTO with Samoa and Vanuatu holding observer status.)
- 3.6 The WIPO (World Intellectual Property Organisation) Copyright Treaty in 1996 heralded changes to copyright law that would acknowledge digital technology and make copyright "technology neutral", providing rights of "communication" to copyright owners and preventing the circumvention of copyright protection mechanisms.
- 3.7 A lot of the copyright and IP laws in the Pacific Region are based on old, out of date laws of the UK or New Zealand. They have not all kept up with these international agreements and are at varying stages of development. However, most countries provide for copying by libraries for preservation purposes and for the research and private study of its customers.

4. FIJI COPYRIGHT ACT 1999 ("the Act")

4.1 PRESCRIBED LIBRARIES AND ARCHIVES (S48)

4.1.1 The Act covers the use of copyright works by archives and prescribed libraries in Fiji.

4.1.2 Archives include:

- the National Archives of the Fiji Islands;
- any library, museum or other body approved by the Minister of Information to be a repository of archival material under section 3 of the Libraries (Deposit of Books) Act (Cap 109);
- any collection of documents (within the meaning of section 7 of the Public Records Act (Cap 108)) of historical significance or public interest that is in the custody of and maintained by a person or body, whether incorporated or unincorporated, that does not keep and maintain the collection for the purpose of deriving a profit.

4.1.3 Prescribed libraries include:

- the Parliamentary Library;
 - a library maintained by an educational establishment, government department, or local authority;
 - any other library or class of library prescribed by regulations made under section 229, not being a library conducted for profit.
- 4.1.4 Reference to the librarian of a prescribed library or the archivist of an archive includes a person acting on behalf of the librarian or archivist.
- 4.1.5 A library that is part of an organisation conducted for profit is not necessarily a library conducted for profit.
- 4.1.6 The Act provides information on what copying and use of copyright works is permitted by individuals, educational institutions and libraries in Fiji. It does not apply to the lending and receipt of original works.
- 4.1.7 Prescribed libraries and archives may take advantage of the permitted acts provided in Sections 49 to 53 of the Act, non-prescribed libraries may not.
- 4.1.8 All uses of interlibrary loan materials are subject to the provisions of the Act as well as the restrictions set by the lending library.

4.2 COPYRIGHT (S16)

- 4.2.1 The Act provides copyright owners with the exclusive right to publish and issue copies of their work for sale to the public; to copy, store or perform their works, to communicate or broadcast their works to the public online, to adapt their works for other media or authorise any such use of their works (S16).
- 4.2.3 The Act balances these rights by providing individuals, educational institutions and libraries with limited rights to copy from the works of others for criticism, review or news reporting or for research or private study.
- 4.2.3 A creator's moral rights to be identified as creator of the work and to object to derogatory use of the work are also recognised under the Act (Ss 85, 88).

4.3 COPYRIGHT WORKS (S14)

- 4.3.1 Although most of a library's collection is likely to be in print form, it may not necessarily be in hard copy format. Libraries increasingly provide access to the internet and to electronic databases of journal articles. Collections encompass music recordings, film and other audio-visual material in various formats including CD-ROMS and DVDs.
- 4.3.2 All original works that are in material form are automatically protected under copyright law.
- 4.3.3 Works protected
- Literary (written, spoken or sung) and dramatic (dance, mime) works – include translations and adaptations (scripts for audio visual works), computer programs, periodical articles, tables and compilations; typographical arrangements of published editions

- Artistic works – include graphic works - paintings, drawings, diagrams, maps, plans; photographs; sculptures, architecture (buildings and models of buildings)
- Musical works (exclusive of words)
- Films/audio visual works
- Sound recordings
- Broadcasts, cable programmes and communication works.

4.3.4 The copyright symbol © does not need to be displayed for a work to be protected. However, it does provide users with a reminder that their work is protected by copyright. A creator can place their own statement on their work permitting it to be used by others and adding conditions for use.

4.3.5 Some works permit copying of the whole work for educational or non-commercial purposes. They may do this by indicating what uses are permitted in their Copyright statement or they may use a Creative Commons Licence. To indicate that the material is not protected by copyright, a creator may provide a "no rights reserved" statement or indicate that it is Copyright Zero (CC0). It is important to check the copyright provisions on the work itself to ascertain the situation.

4.3.6 Works owned by government bodies are not automatically in the public domain, as is the case in the United States. Works made by, or under the direction or control of, the (Fiji) State are protected under State copyright ("Crown copyright" in countries with a Monarch). For example Annual Reports and other papers and reports prepared by Government Departments are protected under State copyright unless there is a statement that indicates otherwise (see 4.3.4 - 4.3.5 above).

4.3.7 Works are only protected for a certain period of time (see 4.5).

4.3.8 Works **not** protected by copyright

Ideas, concepts, principles, discoveries, procedures, systems, operational methods and general data are not protected by copyright.

Section 27 of the Act makes provision for certain legislative, parliamentary and legal documents to remain in the public domain. Bills, Acts, subsidiary legislation, parliamentary debates, reports of the Royal Commission, Commissions of Inquiry, Ministerial or Statutory Inquiries, Court/Tribunal judgments are specifically excluded as copyright works under this section.

Copyright legislation in Samoa and Tonga exclude "official texts of a legislative, administrative or legal nature, as well as any official translation thereof".

4.4 OWNERSHIP OF COPYRIGHT (S21)

4.4.1 The author or creator of a copyright work is usually the owner of copyright in the work. However, in certain situations this will not be the case.

4.4.2 Where the author has created the work in the course of his or her employment, then the employer will be the owner of the copyright in the work produced unless the employer and employee have entered into a contract or agreement to the contrary.

4.4.3 Many authors of journal or academic articles will pass copyright ownership to the publishers of their works. An author of a literary work such as a novel is likely to pass on the publication rights to the publisher and will enter into a contract to define the rights which he/she is passing on to the publisher. For example, the contract will

indicate whether the publisher has the right to publish in one or more territories, in hard copy print form or online. It is important that the rights held by the different parties are made clear in any contractual arrangement.

- 4.4.4 Under the Act, copyright in certain commissioned artistic works such as paintings, photographs or works of sculpture will be owned by the person commissioning and paying for the work unless there is a contract between the parties that states otherwise (S21).
- 4.4.5 As the publisher of a work, the publisher has certain rights – the rights in the edited work, the rights in the typographical arrangement of the work and in the design of the cover of a book. The publisher may commission certain illustrations, photographs or graphics to be used within the work which he may also own.

4.5 DURATION OF COPYRIGHT AND THE PUBLIC DOMAIN (Ss22-26)

- 4.5.1 "Life plus fifty" is the standard term of protection for copyright in Fiji and other countries with no ties to the EU or US. This is in line with the Berne Convention. However, over the last 10 years (2000-2010) many countries have extended copyright to 70 years (or longer). This has meant that a number of works that had been in the public domain came back into protection for a few years in those countries.
- 4.5.2 In Fiji, copyright lasts for 50 years after the end of the year in which the author dies or 50 years from the end of the year in which the work was created or first published (e.g. film, sound recording) (S22). State copyright lasts for 50 years. In some countries State or Crown copyright is protected for longer (e.g. in New Zealand, Crown copyright lasts for 100 years).
- 4.5.3 A publisher's typographical right in a published work (including new editions) lasts for 25 years from the end of the year in which the work was first published (S25).
- 4.5.4 Once copyright in the work has expired it falls into the "public domain" and it can be freely used and copied. For example, if a customer wants to copy a work that is in the public domain, then the library can provide him with a copy, without any copyright issue arising.
- 4.5.5 Many people believe that everything on the Internet is "in the public domain". This is not the case with regard to copyright as all material communicated online is automatically protected by copyright and the same copyright rules will apply unless the creator specifies that "no rights are reserved" and the work is copyright free.
- 4.5.6 There are various ways in which the duration of copyright might be extended. For example, a work that had not been published or made available to the public may be discovered on the death of the creator. If it is a literary work, the beneficiaries of the estate might publish it and copyright would last for 25 years from the date of publication. If it was a sound recording or audio-visual work, copyright would last for 50 years from the end of the year in which the work is made available to the public.
- 4.5.7 A library may assume that a work can be freely copied if it is reasonable to assume that copyright has expired or where it is not possible to ascertain the author's identity after reasonable enquiry (S62).

4.6 COPYRIGHT INFRINGEMENT (Ss29-39)

4.6.1 Copyright is infringed by anyone who does any of the following restricted acts without appropriate authority:

- copies the work, or any part of it;
- issues copies of the work to the public;
- performs, plays or shows the work in public;
- broadcasts or communicates the work to the public online;
- makes an adaptation of the work.

4.6.2 Copyright is also infringed by a person who, without permission:

- imports an infringing copy;
- possesses or deals with an infringing copy in the course of business;
- knowingly provides the means for making infringing copies;
- transmits a work knowing or having reason to believe that infringing copies of the work will be made;
- permits the use of premises for an infringing performance;
- provides apparatus for an infringing performance.

4.6.3 Although libraries provide public photocopying machines, they are not provided for the purpose of making infringing copies. They are provided to enable the public to copy under a “fair dealing” or “permitted use” provision. For this reason, it is important that libraries provide notices to the public informing them of what copying they are permitted to do.

4.6.4 Subsequent copying, letting for hire or selling of a copy made under a “fair dealing” or “permitted act” provision is not permitted and would constitute an infringement.

4.7 INFRINGEMENT PENALTIES (Ss109-113, 115, 121)

4.7.1 An infringement of copyright is actionable by the copyright owner or his or her exclusive licensee. A civil action may be taken to seek remedies such as damages, injunction, delivery up of infringing copies and remedies otherwise available in respect of infringement of any property right. (Injunction is a court order which would require the infringer to stop the infringing use.)

4.7.2 An infringement of a moral right is actionable by the person entitled to the right and civil proceedings can be brought for damages and/or injunction.

4.7.3 Where criminal liability is established, the Act makes provision for a maximum fine of \$100,000 or imprisonment for up to 2 years.

4.7.4 The managers of the institution to which the library belongs will also be liable if it is proved that any infringement took place with their authority or knowledge and they failed to take all reasonable steps to prevent it.

4.8 COPYING (S30(2))

4.8.1 Some copying is permitted under permitted acts or exceptions provided by the Act. It is important to understand the definition and interpretation of “copying” under section 30(2) of the Act:

"Copying" means reproducing or recording a literary, dramatic, musical or artistic work in any material form. This includes storing in any medium by any means (e.g. CD Rom, DVD, computer). It does not include communicating the work or making it available online electronically – on a password protected intranet or through Moodle.

4.8.2 When copying from a copyright work it is important that it is an accurate copy of the original. It should not be adapted or reformatted - this will infringe the rights of the author or the rights of the publisher in the typography of the work.

4.8.3 The work copied should always be acknowledged.

4.8.4 It is good policy to include a notice on the copied work indicating the provisions under which it was copied and that it cannot be copied further without appropriate authority. (Remember: any further copying of a work copied under one of the exceptions is likely to be an infringing copy.)

4.9 PERMITTED ACTS OR COPYRIGHT EXCEPTIONS

4.9.1 Fair dealing (Ss40-42)

As indicated earlier, Berne and TRIPS make provision for governments to make certain fair dealing exceptions which must be limited to "certain special cases" which do not "conflict with the normal exploitation of a work" or "unreasonably prejudice the legitimate interests of the rightsholder". The Act provides the following general copying exceptions:

- Incidental copying of a work in a film or sound recording or another work is permissible where the copying is not deliberate (S40).
- Extracts from works can be copied for criticism, review or news reporting (as long as the work is acknowledged) (S41).
- Copying for research or private study by individuals is permissible where only a reasonable portion is copied (e.g. an article from a journal or up to 10% of a book) (S42). Only one copy can be made for the individual and it cannot be copied further.
- Fairness of use should be judged on:
 - the nature of the work copied,
 - whether the work is available for purchase at a reasonable price,
 - the effect of the copying on the market and/or the value of the work, and
 - the significance of the portion copied in relation to the whole. For example 10% of a book would be considered significant where the copying included the summaries of each chapter, but not where the book was unavailable for purchase.

4.9.2 Educational Exceptions (Ss44-47)

In the absence of a copyright collective licence that provides for copying/use by educational institutions, the Act provides exemptions (or partial exemption) from infringement for certain uses of copyright works by educational institutions. Tertiary educational institutions have a partial exemption which permits:

- The copying of one chapter or 10% (**whichever is less**) from a **literary, dramatic, musical or artistic work** for supply to students or staff (S44).
- This includes the copying of a whole artistic work (such as an illustration) where it is part of the chapter or 10% being copied.
- Copying from similar works available on the internet.
- The material copied can be provided in print form or on CD. It cannot be provided online, on a password protected intranet or on Moodle.
- There is **no provision** for making copies of articles – a reading list needs to be provided to students who can access articles through the library or online.
- The copying of sound recordings, audio visual works or audio soundtracks and broadcasts for instructional purposes (by person giving/receiving instruction) (S44).
- The performance of literary, dramatic or musical works or the playing or showing of sound recordings, audio visual works or broadcasts as long as not to the public (i.e. restricted to students and staff, not extended to family) (S45).
- Staff can record a television or internet broadcast or copy a recording made by or on behalf of USP for educational purposes (S46).
- Copyright material can be freely used to set and answer questions for examination purposes which can be communicated (online) to candidates (S47).

4.9.3 Copying by librarians for individuals for research and private study (Ss49,50)

Category	Types of Work	Examples	Copying Limits	Act
Books	Literary, dramatic, music, artistic works	Novel, play, sheet music, book about music (not a compilation of works)	Short excerpt from a work by one author – may include artistic work; Single copy only;	S49
Books/publications	Literary, dramatic, music	Compilation of works – plays, music, poems etc.	Short excerpts from individual works – may include artistic work	S49
Periodicals, journals	Literary, dramatic, music	Articles or works of a similar nature	One article from journal/periodical publication – two if on same subject – may include artistic work	S50
Databases of works subscribed by Library	Literary, dramatic, musical, artistic	Audio-visual works	Governed by licensing agreement. Student access by direct link.	
Web resources	Literary, dramatic, musical, artistic	Any of above	As above	

The following rules apply to any copying by librarians for its customers:

- There **must** be a request to copy from the library user - the library cannot make copies in anticipation of demand.
- Single copy only - the copy provided cannot be copied further (any further copy would be an infringing copy).
- The Library must be satisfied that the material copied is for the research or private study of the individual seeking the copy.
- The copy must not be related to a similar request from another person – i.e. it is not appropriate for a lecturer to suggest that students approach the library for individual copies of an excerpt from the same work as this would not be for

“research or private study” - it would be at the behest of the teacher or educational institution and should therefore be copied under an educational exemption or collective licence.

- The library can seek reasonable remuneration to cover the costs of copying.

4.9.4 Copying for supply to other prescribed libraries (S51)

Librarians of prescribed libraries may provide other prescribed libraries with single copies of:

- published editions of literary, dramatic or musical works contained in a book by one author inclusive of any artistic work included in the work;
- a whole article inclusive of any artistic work included in the article from a literary, dramatic or musical periodical;

where the other library has been unable to purchase the work at the normal commercial price in the 6 months preceding supply.

The receiving library must keep appropriate records identifying the work copied and pay equitable remuneration to the copyright owner on demand.

4.9.5 Replacement copies of works in collection (S52)

Where original works are unavailable for purchase in the market place, librarians of prescribed libraries may:

- make a copy of any item in the permanent collection of the library or archive to preserve or replace that item. The copy made may replace the original item or be placed in the permanent collection in addition to the original item.
- copy any item in their collection to replace the item in the permanent collection of another prescribed library which has been lost, destroyed or damaged.

4.9.6 Copying unpublished works (S53)

At the request of an individual, a library may make one copy of an unpublished work held in its collection **only** where the copyright owner has not prohibited copying of the work and there is no collective licence that permits such copying. A reasonable fee may be charged to recoup the costs of such copying.

4.9.7 Rental rights (S73)

The TRIPS agreement protects the rights of producers of sound recordings and films and authors of computer programs to prohibit the commercial rental of their works to the public. Under the Act, educational institutions and libraries may rent out computer programs, sound recordings or audio visual works as long as it is not for the purposes of making a profit. There is an assumption that users will use the works privately or view them with friends and family. Libraries can also let customers view them or use them in the library at private viewing stations. To encourage respect for copyright and copyright compliance generally, it would be advisable to put a notice on such works indicating that the work can only be used not be copied

4.9.8 Performance (S69)

Under TRIPS, performers have the right to prevent unauthorised recording, reproduction and broadcast of live performances. However, under the Act

reasonable extracts (i.e. a chapter, paragraph) from published literary or dramatic works can be read or recited in public without clearance as long as the reading is accompanied by sufficient acknowledgement of the author. Such a reading can be recorded and broadcast. (S64)

4.9.9 Miscellaneous exceptions

- Abstracts accompanying scientific or technical articles can be freely copied unless such copying is covered under a collective licence. (S65)
- A backup copy of a computer program may be made as long as the copy is made on behalf of the lawful user for use should the original be lost, destroyed or rendered unusable (S74). A similar provision is often contained in the "shrink wrap" agreement for software and audio visual products. But this is not the case in all countries.

4.10 COPYING FOR VERTICAL FILES

Copies of copyright works may be placed in vertical files where:

- the copies are made under sections 51 and 52 above;
- the copies are made under a collective licence or a licence from the copyright owner;
- the work is out of copyright

and they are marked accordingly.

Such copies may be copied as if they were original works by librarians of prescribed libraries under sections 49 to 52 of the Act.

5. MULTI-MEDIA RESOURCES AND LICENSING

In today's world of digital technology more and more works protected by copyright are made available online including e-books which can be accessed through computers and e-readers. Educational publishers are providing password protected access to digital books online or on CD Rom when purchased in conjunction with the printed book. Software and electronic publications can be purchased online under "click wrap" licensing agreements. Boxed software, CD-ROMs and DVDs are purchased subject to "shrink wrap" licences. By opening the shrink wrap packaging, purchasers are agreeing to the licensing terms provided inside (usually seen from the outside through the shrink wrap packaging).

Librarians need to take note of the licensing terms provided with such resources and ensure that any use of the works is in accordance with the terms of the licence. These contractual terms will often override the provisions of copyright law.

Libraries might like to add broadcast programmes to their collection by obtaining permission to copy from the copyright holder. Detailed copyright clearance records must be maintained to certify the integrity of the collection. The work should also be marked with a notice indicating that it was copied under licence from the Copyright Owner (and, of course, cannot be copied further).

Where libraries are providing computer access to customers, it is important that they ensure that customers cannot download or copy any of its computer software. The best way to protect software is by using a local area network (LAN) where the computer used by the

customer is connected to another computer on which the programs are loaded. With proper network security measures, software disks are not available for copying.

Libraries are often provided with donated works. Before they are put into the library catalogue, it is important to check to see whether the works are authentic - any material which is likely to be an infringing work (e.g. an unauthorised copy of a movie on a DVD), should not be put into the collection. It should be returned to the donor or destroyed rather than being passed on in a used library collection sale. If they are authentic works, then they should only be used in accordance with the licensing agreement that is attached to the work. It may be necessary to transfer the licence to the library which may mean approaching the distributor or copyright holder.

6. CREATIVE COMMONS LICENCES

6.1 Increasingly, creators are using creative commons licences to make their works available for use by others. A creative commons licence is one way for authors, scientists, artists, educators and digital content creators to grant broad rights in their copyright material to the public, without people having to contact them to get permission.

6.2 There are six Creative Commons Licences which incorporate one or more of the following elements:

- **Attribution:** allowing third parties to copy, distribute, display and perform the licensed work and derivative works based upon it, provided there is acknowledgement of the creator. All Creative Commons licences require attribution.
- **Non-commercial:** allowing third parties to copy, distribute, display and perform the licensed work and derivative works based upon it, for what are described as “non-commercial” purposes.
- **No derivative works:** allowing third parties to copy, distribute, display and perform copies of the licensed work, but not to make what are described as “derivative works”.
- **Share alike:** allowing third parties to distribute derivative works but only under a licence identical to the licence applying to the licensed work.

6.3 The terms and conditions of the Creative Commons licences are set out in a “Legal Code” online (www.creativecommons.org) and there are short-hand descriptions of the licences shown on the work

(e.g. ).