Copyright guidelines for VCE Season of Excellence applications

Please note this is general information only and students are advised to discuss their project with their teacher, to explore the information at the copyright sites listed in these guidelines, and seek professional advice. Note also that these guidelines are subject to change; students and teachers should ensure they access the most up-to-date versions of the guidelines from the VCAA’s [VCE Season of Excellence (the Season) webpage](https://www.vcaa.vic.edu.au/news-and-events/events-and-awards/season-of-excellence/Pages/Index.aspx).

Students including ‘third-party’ content in their creations

‘Third party’ content means **any work or content not created by the student**.

When the VCAA selects students’ work to appear in the Season of Excellence events (Top Screen, Top Designs, Top Arts, Top Class) that student work is communicated to a **public** audience: through an exhibition, screening, virtual tour, catalogue, publicity material or website. This public communication falls outside the scope of the normal educational allowances and licences which enable students and teachers to copy ‘third-party’ copyright works in the course of educational instruction.

To participate in the Season’s program, students need to ensure they correctly acknowledge and seek copyright permission for any **third-party copyright content** included in their exhibited, final work.

Students should **start the permissions process as early as possible** and leave sufficient time for any modification they may need to make to their own work, if permissions are not forthcoming. Communications with ‘real world’ or ‘industry’ contacts arising during the permissions process can also give students valuable insights into the practical and legal aspects of working in creative industries.

As part of their application for Season events, students will need to supply evidence of their efforts to secure permissions: copies of requests sent and responses from copyright owners/creators.

The selection panels will not consider any student work for inclusion in the Season unless all third-party source acknowledgements are adequate and any necessary copyright permissions have been obtained and submitted to the VCAA.

Copyright in ‘third-party’ works

Unless copyright has expired (duration of copyright is generally death year of the author/creator **plus 70 years**), a work will be ‘in’ copyright, meaning only the copyright owner can make and distribute copies, make modifications or adapt the work, display the work in public or put the work online.

Wherever any third-party content is included in a student’s development folio, students must include an accurate source acknowledgement with those third-party items.

Wherever any third-party content is included in a student’s final work, the student must:

* include accurate source acknowledgement
* provide evidence (as part of their Season application documents) indicating reasonable efforts made to secure copyright permissions for inclusion of the third-party content **for public exhibition**.

The VCAA reserves the rights to obscure content in student works where exhibition of the content may pose a legal risk.

Note also that adapting or modifying third-party content will not ‘avoid’ the need to secure permission. In fact, it increases the need for permission because the work is not only being reproduced and publicly exhibited but also modified from its original form.

Third-party copyright content can include:

* **text** quoted from poetry, plays, song lyrics, magazine articles, websites, etc. Note also that **software** is also protected under the Copyright Act in the same manner as other works of text. Students are strongly encouraged to preference open source software for their projects and to read and comply with any software licence terms governing the software they use.
* **images**, photos, illustrations, graphics, ‘stills’ or ‘screenshots’ from animation, computer games, social media
* **designs** such as 3D models, gadgets, containers or packaging: these can be covered by both copyright law and design laws. Students wanting to replicate or incorporate iconic designs into their own final works will need to secure permission from whoever holds the design rights and/or the copyright.
* **logos and trademarks** or product/company branding: These can be protected by overlapping layers of legislation: copyright, trademark and design laws.
* Copying the font, styling or graphical representation of a company title or product name can infringe copyright and other rights if done without permission. However, just *referring* to a company by name (not copying the look or styling of the visual representation of the name) won’t normally require permission.
* If a student is using an existing company brand or logo as a mock client or source of inspiration for their work, the student can refer to the company name, but must not incorporate the company logos and trademarks into their final work without the company’s permission.
* Students must also take care that their manner of representing or referring to a company, business or organisation will not be damaging to the company’s reputation or go beyond fair or reasonable criticism. Some companies will allow you to use their logo and trademark so long as it is used in accordance with their published guidelines: check the company’s Legal Notices or website Terms and Conditions.
* **video/film footage, music or other sound recordings** copied from disks or from social media and other online services (Youtube, iTunes, Spotify, etc.). Commercially produced film and music recordings are ‘high risk’ copyright works (being frequently infringed and where even small amounts can be of high commercial value to the rights holder). They are also highly complex, multi-layered works as far as copyright is concerned. In some cases, the student may also need to secure a ‘moral rights consent’ (e.g. use of another creator/composer’s music or lyrics in an unusual or unexpected setting). For audio-visual copyright content there is commonly more than one copyright holder and students need to be prepared to get permissions from **all** the various rights holders (for example, for a song, this may be the music composer, the lyricist, the record company and possibly also the performers featured in the desired recording). Securing permissions may require contacting both the recording or film production companies and individual writers, artists/composers or their designated agents. This can take a great deal of time and the costs involved may be prohibitive. Consequently, students should **avoid** incorporating clips from commercially released music, films or TV shows into their own works. Students needing to include music in their work (for example, ‘synching’ music with their own short film) are **strongly encouraged** to source music from flexibly licensed sources or create original music. Students are also encouraged to look to local musicians within the school or among their friends to create and perform music for their project: copyright permission must still be secured from these musicians, artists and creators but should be easier to negotiate.

Using ‘Creative Commons’ and other ‘flexibly’ licensed works

Students may also find ‘copyright free’ or ‘Creative Commons’ licensed content available on the Internet. Students can include such content in their own work but they need to **read and thoroughly understand** any accompanying licence terms and submit a copy of these to the VCAA with their final work. CC licences are enforceable and **do not provide free permission for any and all purposes**: they are ‘up front’ licences with ‘some rights reserved’. Some of the licences do restrict what end users can do with the licensed content. For example, third-party works licensed under a CC licence which includes the ‘No Derivatives’ (‘ND’) condition cannot be adapted or modified. This includes using only **parts** of the work, or actions such as ‘synching’ music recordings labelled ‘ND' to film or images, so CC works with the ND condition will not be suitable for remodelling or incorporating into a student’s creative project.

Similarly, if a work is licensed under a CC licence with the Share Alike (‘SA’) or Non-Commercial (‘NC’) conditions, students will need to carefully consider the implications of including these third-party works in their own design or creation if they intend using their work beyond completion of VCE. (The ‘Share-Alike’ condition restricts a user to licensing their own work under exactly the same CC licence; a student’s ‘derivative’ work that includes third-party content licensed CC-BY-NC, for example, can only be made available on a non-commercial basis.)

Students and teachers can find more information at:

* [**Smartcopying > CC-Open Education resources**](https://smartcopying.edu.au/creative-commons-oer/) (from the National Copyright Unit)
* [**Creative Commons Australia**](https://creativecommons.org.au/)

Cultural copyright and sensitivities

Some students develop creations using designs and artworks by Aboriginal and Torres Strait Islander peoples, or inspired by Aboriginal and Torres Strait Islander artefacts and cultural expressions (languages, knowledge, story-telling).

Aboriginal and Torres Strait Islander art, designs, languages and cultural expressions are protected both under Australian copyright law (if recorded in 'material form') and also under other legislative and policy frameworks, such as the Victorian Aboriginal Heritage Act (Vic) and various Aboriginal and Torres Strait Islander cultural protocols.

Students need to research their proposed use of such works very carefully and be prepared to secure permission not just from official copyright owners but also from **relevant** Aboriginal and Torres Strait Islander communities.

For more information on engaging with First Nations peoples and First Nations cultural and artistic expressions, please access:

* The National Association for the Visual Arts (Australia) resources on [**First Nations Engagement**](https://visualarts.net.au/guides/category/156) and the NAVA [**Code of Practice**](https://visualarts.net.au/accounts/login/?next=/code-of-practice/) (available via free subscription)
* [**Valuing Art, Respecting Culture**](https://www.terrijanke.com.au/valuing-art-respecting-culture) (2001) by Doreen Mellor and Terri Janke;
* The [**Australia Council for the Arts Protocols for using First Nations Cultural and Intellectual Property in the Arts**](https://www.terrijanke.com.au/australia-council-for-the-arts-prot) (3rd Edn.;Terri Janke et al. 2019) and related [resources available at Terri Janke and Company](https://www.terrijanke.com.au/resources).

Moral rights of authors and creators

In addition to copyright, authors and creators have moral rights. These are distinct from copyright, being *personal*, non-transferable rights (they always remain with the original author/creator, even where the copyright is transferred to another person or entity). These rights protect the individual author/creator’s reputation and integrity in relation to their work, by ensuring that other people using their works

* correctly ‘attribute’ or **acknowledge** them **as the author/creator** and
* use their creations in a **respectful** way.

1. Attribution

If a student includes someone else’s work as part of their own creation they will need to **acknowledge** that other person’s contribution to their creation. For example, if a student includes someone else’s photographs in their work, the student must indicate the photographer (which may be **different** to the copyright holder) either with those photographs (a small caption or side ‘tag’) or otherwise in a manner which enables viewers to be aware of the photographer’s name and work (an acknowledgement page or a credits screen in a film). Where the photographs in their original setting or source already included a caption or tag indicating the photographer/creator, this should be retained when the work is re-used by the student. A student may omit attribution (acknowledgement) of a creator **only** where they are **genuinely unable to identify** that original creator. In such instances students should supply evidence (i.e. document the searches they made) of their efforts to identify the original author/creator as part of their copyright clearance documentation supporting their Season of Excellence application.

2. Derogatory treatment

If a student includes someone else’s work as part of their own creation **and** if the student wishes to exhibit their creation through the VCAA’s Season of Excellence, the student must avoid using the other person’s work in a way which could be ‘derogatory’ to that person, harm that person’s reputation or give them cause to complain. **The Season of Excellence selection panel reserves the right to exclude student works that pose an unacceptable risk in this regard, even if the artistic or creative merit of the student work is exemplary**.

'Derogatory' use is not easy to define but may include things such as changing the work so that its original meaning or intent is also changed (particularly if the changes made to the work are likely to be recognised by others as creating a negative, objectionable or unfavourable view of the work or its original creator). In some cases even using a person’s work in a different context to its original setting could constitute derogatory treatment, which could, in turn, harm the original creator’s reputation: for example, a character from a children’s book depicted in a ‘horror’ setting; song lyrics or poetry printed on clothing of a style which contradicts the original spirit or intent of the lyrics.

If a student’s creation includes an altered version of someone else’s work, and if the impact and nature of that alteration is unclear or ambiguous, the student should try to seek a separate permission, or moral rights consent, from the original creator as early as possible, showing the creator the proposed use of their work. This is essential in case the request is refused or the original creator makes consent conditional on the student’s design or artwork being modified in some way. Note that securing this consent for moral rights purposes is **in addition to** the permission the student will need to secure from the **copyright holder** for changing (‘adapting’) that work (**adaptation** also being the right of the copyright holder).

There is no set rule as to which to pursue first: copyright permission or ‘morals rights consent’. In some cases, securing consent from an author/creator concerning changes to their work may assist in obtaining permission from a separate copyright holder for adaptation of that work; or the copyright owner may have already secured a waiver of moral rights from a creator, eliminating the need to secure a separate ‘moral rights’ consent.

Students protecting and asserting copyright in their own original work

Copyright in any **original** work created by the student remains with the student as the first creator or author of that work. While copyright arises automatically under Australian law (whether indicated or not) students should consider including their own assertion of copyright in the from of a simple statement or indicator, placed in an appropriate manner on or within their work.

**© student name [year]**

Where a student’s work also includes third-party content, students should include (or retain) any copyright acknowledgement with that third-party content (or indicate as directed by the copyright holder in their permission) and reference this contribution generally in their own copyright indicator or statement:

**All content © student name [year] except where otherwise indicated.**

Another method may be to provide a list of third-party acknowledgements or permissions granted and then conclude this list with the student’s own copyright assertion statement:

***[listed items for which permission granted]***

**All other content featured [or describe the content: designs, plans, folio, text descriptions, photographs, etc] © student name [year]**

Exact wording and placement may depend on the nature of the project. Students can get an idea of what may be appropriate as an indicator as they explore ‘real world’ designs and creations. A student may include their own copyright statement in opening or end credits of their short film; a student who develops an app, online/computer game or webpage may include their statement in a credits ‘tab’ or briefly in a webpage footer; systems engineering and product design students producing models might include a statement in any accompanying plans or product documentation.

Students capturing or visually representing other people through their films, photographs or other media

Student works may include photographs or film footage of other people (‘subjects’) **taken by the student**. The student (as photographer/filmmaker) will be the copyright owner of the photographs or video footage, but the student may still need to secure consent for privacy purposes from the **subjects** of their photos/film. A written consent is preferable, and worded so that the subjects indicate they are aware of the full purpose for which their image will be used: not only for inclusion within a VCE assessment task but also for public display within the student’s work through the VCAA Season of Excellence.

Students should retain copies of this consent where possible. The VCAA has privacy obligations under the Information Privacy Act which it must observe where, for instance, it displays student works containing photographs or film of other people as part of public events. The same would apply also for other forms of artistic representation, such as portrait sketches or paintings where the identity of the subject may be recognisable.

No privacy consent is required where a student copies (or ‘adapts’, redraws, sketches or paints) an image of a person and that image was sourced from a ‘generally available publication’ (photos of a person found on a website which is publicly accessible, for example; or photos of a person published in a magazine or book). Note, however, that copyright permission (for making a reproduction or adaptation of the publicly accessible image) might still be required from the *copyright owner* of the original image.

Planning for filming, photography or creating art ‘on location’

Students whose creative work may require filming or creative activity beyond the school premises should also consider, early in the planning stage, whether they need to secure permission or consent to undertake that activity in the desired location. Filming on private property will commonly require consent from the property owner, even where members of the public have ready access to the property (some city building foyers or shopping centres, for example). The Arts Law Centre of Australia recommends location consent be secured from both current occupier/tenant and landlords when filming in private residential properties and notes other issues to consider in the choice of location (potental for nuisance to neighbours). Councils and other government authorities may restrict filming or regulate other activities conducted on public land or in public buildings.

In some cases, the student’s chosen media, methods or equipment used for filming or art practice may also require compliance with regulations or laws. For example, the Civil Aviation Safety Authority (CASA) sets out the recently revised laws relating to the use of drones ([**https://www.casa.gov.au/drones**](https://www.casa.gov.au/drones)). Government schools can also access new policy and guidance on drone use in schools ([**DET Policy and Advisory Library - Drones**](https://www2.education.vic.gov.au/pal/drones/policy)).

More information

* For general information on copyright, moral rights, performer’s rights and seeking permissions, access the information sheets and related guides at the [**Australian Copyright Council**](https://www.copyright.org.au/)**.**
* For advice specific to copyright in the school education context read the advice at [**Smartcopying**](https://smartcopying.edu.au/)
* For guidance and resources on a range of legal issues for film-makers, photographers and artists access the [**ArtsLaw**](https://www.artslaw.com.au/) (Arts Law Centre of Australia) website
* Some copyright agencies and professional creative associations may have information about owners and how to secure permission. In some cases they may also act as licensing agents:
* [**Copyright Agency**](https://www.copyright.com.au/) may be able to assist with rightsholder information relating to published text and illustrations/artistic works
* [**AIPP**](https://aipp.com.au/) (Australian Institute of Professional Photography) may assist with contact for particular photographers
* [**OneMusic Australia**](https://www.onemusic.com.au/) can assist with information and licensing for music sound recordings
* The [**Australian Society of Authors**](https://www.asauthors.org/) and/or the [**Australian Writers Guild**](https://www.awg.com.au/) may be of assistance for tracing authors, screenwriters and performance writers.

Copyright Permission Request Instructions and Checklist

Now that you have read and understood the Copyright Guidelines, please use this checklist to prepare for your permission request.

COMPLETE THIS CHECKLIST AND RETAIN THIS AS A RECORD OF YOUR ATTEMPT TO SECURE PERMISSION

Stage 1: Preparing your permission request

🞏 Have you correctly identified the true copyright owner and are you sure you have the correct contact details for them or their agent?

***TIP:*** Remember that some copyright owners or creators may delegate their authority to grant permissions to an agency, collecting society or a publisher. You can save a lot of time and effort if you verify this *before* sending your permission request.

🞏 Have you prepared concise documents or work samples for including in your request (‘**attached documentation**’ in the request letter), which identify the copyright holder’s work and which show how you intend to use it, including:

🞏 a brief summary description (a paragraph or two) of your project, explaining the task you were set and describing how the copyright owner’s work is used in your finished work, including any changes you made to their original work. For example:

‘My project involved updating a company logo; I redesigned the logo by applying new colours and adding a tag line in new font…’

‘I made a short documentary film about urban wildlife and wanted to include a soundtrack by synchronising some of your music with my film;

‘My work comprises a mixed media collage which includes details reproduced from your photographs, rendered in black and white’

🞏 a copy of the original copyright work for which you seek permission (this helps the copyright owner to be sure about which of their works you wish to use)

🞏 a mock-up or copy of your finished work, showing how the copyright owner’s work is featured AND how you will indicate acknowledgement of their work. Remember, you may also include a copyright indicator for your *own* work (© your name, 20XX). If your work includes images or other personal information identifying other people you should, where possible, ensure you have their consent.

***TIP***: For requests sent by email use meaningful, logical files names for attachments and attach no more than 5 files.

Stage 2: Completing and sending the permission request

🞏 Have you customised the letter (replaced **grey text** and deleted *[square brackets]*?)

🞏 Have you signed the letter and provided appropriate contact details to enable the copyright holder to respond?

***TIP:*** Think carefully about what contact details you should provide: you need to approach this task in a professional manner and you need to be mindful of protecting your own privacy, too. If in doubt, discuss this with your teacher, school advisers, parents or guardians.

🞏 Have you included/attached the documents or work samples with your email/letter?

***TIP:*** Some rights holders may only accept requests in hard-copy, not via email or online. Also, if the copyright holder is local or an individual rather than a company or institution (think author or artist) sending a stamped self-addressed envelope may assist them to respond promptly.

More Information and contacts:

Consult with your teachers about the copyright permissions process and, if necessary, seek further advice from the VCE Season of Excellence team, by email:

[**seasonofexcellence@education.vic.gov.au**](mailto:seasonofexcellence@education.vic.gov.au)