

Commercial Availability Checks

What is a Commercial Availability Check?

A Commercial Availability Check is a step required in determining whether you can rely on specific exceptions in the Australian Copyright Act 1968. The aim of the check is to determine if a copy of an item can be available for a specific purpose within a reasonable time, and at an ordinary commercial price. If the item can be sourced commercially, then you should acquire it rather than proceed with relying on the exception to use the item.

When is a Commercial Availability Check required?

The checks are required for a range of activities undertaken by the Library such as supplying works for the purpose of research and study. In addition, checks are required for two exceptions available to Curtin as an educational provider:

1. s113F for the use of copyright material by institutions assisting a person with a disability as outlined in [Copying for People with a Disability](#). This exception allows Curtin to copy material into accessible formats for people with a disability so they can access the material.
2. s200AB (also known as flexible dealing) for using copyright material when no other exceptions apply. The most common instance of when we might apply s200AB is format shifting content from physical formats to digital files as outlined in [Digitising Audiovisual Materials for Teaching](#).

How do I do a Commercial Availability Check?

If the use is related to Curtin learning, teaching, and research requirements we suggest you [contact the Library](#) to request they source the item and add it to the Library collection. Library staff have access to vendor databases that have information about the status of published items.

For other uses, we suggest you speak with the [Library Copyright](#) team about the proposed use, as exceptions like s200AB can be difficult to apply. Generally this would depend on the type of content you are sourcing. Ideally you should:

- Check at least three sources (e.g. a publisher website, the National Library of Australia's [Trove database](#), etc.). It is possible by doing a comprehensive search you will locate an alternative version.
- If unable to find clear information about the status online, you may contact the publisher to confirm the commercial availability. If you get anything in writing to confirm that the item is not commercially available you should store a copy of the correspondence.
- If the publisher is no longer in business or able to be contacted, at a minimum you should keep a written record of your investigations, including what sources you searched, the date of the search, and the outcome (e.g. title not found).