

FAIR DEALING FACT SHEET



OFFICE OF SCHOLARLY COMMUNICATION

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What is fair dealing?



Fair dealing is a term which anyone dealing with copyright in an educational setting is likely to come across. In the UK fair dealing is an exemption to copyright and can be used to make limited copies of sections of otherwise copyright protected works.

The list of circumstances where this is allowed is outlined in the Copyright, Designs and Patents Act (1988) and the guidelines around them are strict. There is no official amount that can be copied under fair dealing and it is instead defined as "what a fair and reasonable person" would do. When using the fair dealing exemption it is important that you do so sensibly rather than using it as an excuse to infringe copyright.

Although there is no concrete definition the Intellectual Property Office recommends that any use should not negatively impact the financial market for the original work and that the amount taken is reasonable and necessary to the new work.

How is this different from fair use?

Fair dealing and fair use are terms often used interchangeably but they actually mean different things. Whilst fair dealing is an exception to UK copyright law which can be used as a defense in court it should not be relied upon as a way to use materials and the safest course of action is to seek permission.



In contrast, fair use is a defined part of US law which limits the exclusive rights of copyright holders in order to balance their needs with the interests of the public. Fair use offers four factors which can be used to assess whether use of a copyright work is fair: the purpose, the nature of the copyright work, the amount being used and its impact on the potential market for the original work.

WHEN CAN FAIR DEALING BE USED?

Fair dealing argues that researchers, students or anyone with an interest can make limited copies of copyright protected material in certain specific circumstances. These circumstances are outlined below:

NON-COMMERCIAL RESEARCH & PRIVATE STUDY



Perhaps the most used exemption to copyright in education this allows anyone to take copies of a copyright work for their own study, for example a photocopy of a book chapter to take notes for an essay. Any use must be for non-commercial work rather than publication and sufficient acknowledgement must always be given. There are specific limits for this use such as one article from a journal issue or one chapter of a book in order to limit the financial impact on the copyright holder(s). There are also circumstances where libraries can make accessible copies of copyright materials on behalf of their users.

QUOTATION, CRITICISM & REVIEW



Another commonly used exception allows the inclusion of copyright material if the author of the new work is quoting it, critiquing it or otherwise reviewing it in some way. Usually this happens when an author is using a portion of a copyright work as an example of a wider discussion such as including an image of a Renoir painting in a discussion on impressionist art. Any materials used should be publicly available and acknowledged in the new work. Crucially the amount used should be no greater than what is needed to make the point and genuinely used for the purposes of quotation, criticism or review rather than just as an illustration.

REPORTING OF NEWS



It is reasonable to expect that reporters might need to include some copyright protected materials in order to produce news stories, for example archive footage. Provided that the story is current, the use is fair and there is sufficient acknowledgement this is allowed. The one exception to this is the use of images and photographs. The rights to these belong to the individual copyright holder and the normal permissions for use need to be sought.

WHEN CAN FAIR DEALING BE USED?



GOVERNMENT ADMINISTRATION

Much as with reporting news there may be circumstances where government departments need to include portions of copyright works in their own documents. This is something that departments will rely upon in order to do their work but it likely to be of limited use to anyone else.



ILLUSTRATION FOR INSTRUCTION

Just as students might need to copy extracts of a copyright work for their study, teachers may also need to use extracts of materials. Teachers are allowed to use limited amounts of copyright protected work in order to illustrate a point they are making as part of their lesson or when setting exam questions. As with all other exceptions the use of material should not infringe on the ability of the copyright holder to make money and should be properly acknowledged. This exception does not cover large scale copying of works for students – for example on handouts – as this is dealt with by a different rule.



CARICATURE, PARODY OR PASTICHE

Sometimes the critique of a work or the creation of a new work takes a humorous form, such as creating a comedy sketch based on a famous film. Anyone wanting to do this should consider the commercial harm they could cause to the original work and remember that under their moral rights, copyright holders can object to derogatory treatment of their work. This can result in legal action even if the parody falls within other limits.

REMEMBER

Fair dealing is an exemption to UK copyright restrictions but anyone wanting to use work belonging to others should still exercise caution and common sense when selecting work to use. If you are in any doubt about what you want to use then ask your local librarian or copyright advice service for help or seek permission from the copyright holder.