



INFORMATION SHEET

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Fair dealing

January 2007

The Copyright Act 1968 (Cth) allows people to use copyright material without the copyright owner's permission in certain situations. These include making a "fair dealing" for certain purposes.

The purpose of this information sheet is to give general introductory information about copyright. If you need to know about how the law applies in a particular situation, please get advice from a lawyer.

We update our information sheets from time to time. Check our website at <http://www.copyright.org.au/permission> to make sure this is the most recent version, and for other information such as our training program.

Key points

- The Copyright Act allows "fair dealing" with copyright material for certain purposes.
- There is a new exception allowing fair dealing for parody or satire.
- There is no equivalent to the fair use defence in US copyright law, which can apply to use for any purpose.

When can you use copyright material without permission?

In general terms, if you want to use copyright material (such as books, newspaper articles, scripts, music, artistic works or films) in any of the ways reserved to the copyright owner, you will need the copyright owner's permission. For example, permission is generally needed to use copyright material in any of the following ways:

- copying (including photocopying, copying videos or CDs, printing a digital file, downloading material from the internet, and scanning hard copies);
- emailing, faxing, or putting material on the internet;
- translating text;
- making an arrangement or transcription of a musical work;
- making a dramatic work (such as a play, film script or dance) based on a literary work (such as a short story), or vice versa; and
- playing or performing a work, where anyone apart from family and friends will be present (for example, playing music, videos or DVDs at work, or in a social club).

For more information on what is protected by copyright, and the rights of copyright owners, see our information sheet *An introduction to copyright in Australia* available at <http://www.copyright.org.au/introductory>.

Permission not needed if using less than a "substantial part"

You will not need permission if what you are using is not a "substantial" part of the copyright material. Even a very small part of the original may be a "substantial" part: there is no set percentage. The relevant question is whether what has been used is important, essential or distinctive to the original work (see our information sheet *Quotes & Extracts* available at <http://www.copyright.org.au/permission>).

Specific exceptions to infringement

Where a specific exception to infringement applies, you can use all or a substantial part of copyright material without the copyright owner's permission. Exceptions to infringement include the "fair dealing" exceptions, discussed in this information sheet, and the special provisions for educational institutions, libraries and governments (see our information sheets *Libraries* available at <http://www.copyright.org.au/libraries>, *Education institutions* available at <http://www.copyright.org.au/education>, and *Governments (Commonwealth and State)*, available at <http://www.copyright.org.au/government>).

There are now also special exceptions allowing copying for private use in certain circumstances: see our information sheet *Private copying* available at <http://www.copyright.org.au/permission>.

"Blanket" licences

In many cases, it is possible to get a "blanket" licence to use certain copyright material from a copyright collecting society. In return for an annual licence fee, the licence allows you to use the material in specified ways without needing to get specific permission for each use. For further information, see our information sheet *Copyright collecting societies* available at <http://www.copyright.org.au/permission>.

The "fair dealing" exceptions to infringement

A person can make a "fair dealing" with copyright material for any of the following purposes:

- research or study;
- criticism or review;
- parody or satire;
- reporting news; or
- professional advice by a lawyer, patent attorney or trade marks attorney.

What does "fair dealing" mean?

In this context, a "dealing" with copyright material means using the material in any of the ways reserved to the copyright owner.

Whether a person's use of copyright material is "fair" depends on the circumstances of the case. In a recent case, the Federal Court stated that whether a dealing is fair or not "is to be judged by the criterion of a fair minded and honest person".

Courts will look both at whether an objective viewer would consider that:

- the person is genuinely using the material for one of the purposes set out in the Act; and
- their use of it is fair in that context.

Factors that may be taken into account in working out whether a use is "fair" include whether the person using the material is doing so for commercial purposes, and whether the copyright owner is out of pocket from the use (for example, where a person copies the whole of a work that is available for sale). However, the mere fact that the person using the material is not making a profit does not make it fair.

In general, a person or organisation can only rely on a fair dealing defence for his, her or its own use of copyright material. For example, it would not be regarded as a fair dealing for criticism or review to reproduce a collection of photographs and invite other people to critique the photographs. Rather, the person making the reproduction must themselves be making the criticism or review.

Fair dealing for research or study

Use of copyright material for the purpose of research or study will not infringe copyright, provided the use is "fair".

The Copyright Act states that if you use less than a certain amount of a copyright item for research or study, the use is **deemed** to be fair. If the amount used exceeds these limits, the Act sets out a number of factors to be taken into account to work out whether the use of the material is "fair". This provision is discussed in our information sheet *Research or study*.

Fair dealing for criticism or review

People can use copyright material for the purpose of criticism or review without infringing copyright, provided they acknowledge the author and title of the work, and provided the dealing is “fair”. The criticism or review may relate to the work being used or to other material. For example, television film reviewers may show clips from other films as well as the one they are reviewing, in making their criticism or review.

The Federal Court has stated that “criticism and review” involves making a judgment of the material concerned, or of the underlying ideas. Criticism and review may be strongly expressed, and may be expressed humorously, and need not be balanced. The defence can apply where the criticism or review takes place in a commercial context, such as in published books or newspapers or on commercial television.

However, the Court emphasised that **the purpose of criticism or review must be genuine**. If the person has other motives—especially if these motives involve using the material to make a profit, or using a competitor’s material to divert customers from the competitor—the fact that they have also engaged in a form of criticism or review is not enough to prevent the use from infringing copyright.

Fair dealing for parody or satire

You can now use copyright material for the purposes of parody and satire, provided your use is “fair”.

The terms “parody” and “satire” are not defined in the Copyright Act and have not yet been considered by Australian courts, but it is likely that a court would look at dictionary definitions of the words to work out what they mean. The *Macquarie Dictionary* includes the following definitions:

“Parody”:

1. a humorous or satirical imitation of a serious piece of literature or writing.
2. the kind of literary composition represented by such imitations.
3. a burlesque imitation of a musical composition.
4. a poor imitation; a travesty.

“Burlesque” (used as an adjective):

involving ludicrous or debasing treatment of a serious subject.

“Satire”:

1. the use of irony, sarcasm, ridicule, etc in exposing, denouncing, or deriding vice, folly etc.
2. a literary composition, in verse or prose, in which vices, abuses, follies etc are held up to scorn, derision, or ridicule.
3. the species of literature constituted by such composition.

A parody is an *imitation* of a work, and may include parts of the original. In some cases, a parody may not be effective unless parts of the original are included. It seems that the purpose of a true parody is to make some comment on the imitated work or on its creator.

The purpose of satire, on the other hand, is to draw attention to characteristics or actions – such as vice or folly – by using certain forms of expression – such as irony, sarcasm and ridicule. It seems that both elements are required: the object to which attention is drawn (vice or folly etc) and the manner in which it is done (irony, ridicule etc). It is not clear, for example, that a work which uses irony or ridicule about something *other* than something like vice or folly would be satire.

As discussed later in this information sheet, the new provision does not directly affect a creator’s right to take legal action if his or her work is treated in a derogatory way. However, in many cases the use of a copyright work for parodic purposes may be defensible as “reasonable” under the moral rights provisions.

It is not so clear that use of a copyright work for satiric purposes would be as likely to be “reasonable” in all the circumstances. This is because, unlike parody, the object of satire is generally not the copyright material itself or its creator(s). The copyright material used may enhance a work that has a satirical purpose, but is unlikely to be necessary for the for the satirical purpose.

The use of copyright material for parody or satire must be “fair”. It is unclear how courts will assess “fairness” when it comes to this new exception. However, factors such as the following could be relevant:

- how much of the copyright material is used;
- the context in which the parody or satire is used; and
- whether or not the copyright owner generally licences such uses.

Fair dealing for reporting news

Copyright material may be used in reporting news in a newspaper, magazine or similar periodical, or in a film, or by means of a broadcast. The author and title of the work must be acknowledged. Music, however, cannot be included in news reports under this provision, unless the playing of the music is part of the news being reported. (The use of music and sound recordings in this context is usually covered by broadcasters' "blanket licences" from APRA and PCCA. For further information, see our information sheet *Copyright collecting societies*.)

The Federal Court has held that "news" is not restricted to current events. For example, old material, or footage that was never related to a current event, may be relevant to current news events. Alternatively, under this provision investigative journalists may be able to use copyright material they have discovered that relates to past events.

In looking at whether a person's use of copyright material comes within the exception of fair dealing for reporting news, courts are likely to require more than simply a connection with a newsworthy topic. The crucial element in determining whether the exception applies seems to be whether the **primary purpose** is to report or comment on news. Although courts have held that reporting news may involve the use of humour, it seems that where a court considers the purpose of using the material is primarily to entertain, the presence of newsworthy issues is not sufficient to make the use a fair dealing.

Fair dealing for professional advice

It is not an infringement of copyright to use copyright material for the purpose of giving professional advice by a lawyer, patent attorney or trade marks attorney. Again, the use of the material must genuinely be for the purpose of giving such advice, and must be "fair". For example, if an item is available for sale, it is unlikely that this provision would allow a person to copy the entire item for the purposes of legal advice.

Common questions

Can we reprint articles from newspapers and online journals in newsletters to members of our community organisation?

In most cases, reproducing entire articles will require permission. Although reproduction of the article might genuinely be for the purpose of reporting news, it would not, in most cases, be "fair".

If you simply restate public information in your own words, you will not infringe copyright.

If you want to use material from an online journal, check any terms of use to which you agreed in order to get access to the journal. These terms of use may permit, or may prohibit, the re-use of the material. The terms of use may prohibit the re-use of the material even if the re-use would be allowed by the Copyright Act.

Someone has reproduced my work without my permission and is claiming that their use is a fair dealing. What can I do?

In this case, you should try to find out the exact circumstances of the person's use of your work and the basis on which they consider the use was a fair dealing. Before taking legal action, you should seek legal advice about the likelihood that the use was, in fact, fair dealing. For further information on infringement, see our information sheet *Infringement: what can I do?* available from <http://www.copyright.org.au/permission>.

Can we reproduce material in an educational textbook for users of the textbook to critique?

The reproduction may be fair dealing if the textbook criticises or reviews the material. If, however, there is no criticism or review in the textbook, and the criticism or review is to be done by people using the textbook, then the reproduction would not be fair dealing.

Can our photocopying business copy for students for their research or study?

A photocopying business is not entitled to photocopy material requested by students for their research or study. Even if the person requesting the copy genuinely needs it for their research or study, the purpose of the

photocopying business in making the copy would be to make a profit, and it could not rely on a fair dealing defence. However, it might be able to obtain a licence allowing it to make some copies in these circumstances (for example, 10% or one chapter of a book): see above, under the heading "Blanket licences". See also our information sheets *Copying services* (available at <http://www.copyright.org.au/business>) and *Research or study* (available at <http://www.copyright.org.au/permission>).

The Australian Publishers' Association has recently taken action against at least one photocopying business that was copying entire textbooks for sale to students.

Further information

For further information about copyright, and about our other publications and training program, see our website – <http://www.copyright.org.au>.

For information on policy issues relating to fair dealing, see our books *Fair Dealing in the Digital Age* and *Access to copyright material: fair use & other issues*, and our information sheets *Fair use: some myths and misconceptions* and *Access to copyright material in Australia and the US* (available at <http://www.copyright.org.au/reform>).

If you meet our eligibility guidelines, a Copyright Council lawyer may be able to give you free preliminary legal advice about an issue that is not addressed in an information sheet. This service is primarily for professional creators and arts organisations but is also available to staff of educational institutions, libraries and governments. For information about the service, see <http://www.copyright.org.au/advice> or our information sheet *Australian Copyright Council: who we are, what we do*.

Information from the Arts Law Centre of Australia may also be of interest to you: see <http://www.artslaw.com.au> or telephone (02) 9356 2566.

Reproducing this information sheet

You may download and print one copy of this information sheet from our website for your reference, or you may purchase a printed copy from our online shop – <http://shop.copyright.org.au> – or direct from us.

Australian Copyright Council

The Australian Copyright Council is a non-profit organisation whose objectives are to:

- assist creators and other copyright owners to exercise their rights effectively;
- raise awareness in the community about the importance of copyright;
- identify and research areas of copyright law which are inadequate or unfair;
- seek changes to law and practice to enhance the effectiveness and fairness of copyright;
- foster co-operation amongst bodies representing creators and owners of copyright.



Australian Government



The Australian Copyright Council has been assisted by the Commonwealth Government through the Australia Council, its arts funding and advisory body.

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