

# Information sheet G79

## Fair dealing

August 2003

The Copyright Act 1968 (Cth) contains provisions which permit people to use copyright materials without the copyright owner's permission in some cases. The "fair dealing" provisions are among these. They allow individuals and organisations to use copyright material without the copyright owner's permission, provided the copyright material is being used for one of the purposes listed, and is being used in a way that is "fair". This information sheet discusses the "fair dealing" provisions.

For detailed information on the fair dealing provisions, see our discussion paper *Fair Dealing in the Digital Age*. For information about our other information sheets, other publications and training program, see our website [www.copyright.org.au](http://www.copyright.org.au) or contact us (see contact details at the bottom of the page).

**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.**

A Copyright Council lawyer may be able to give you free legal advice about an issue not addressed in an information sheet. This service is primarily for professional creators and arts organisations. For further information about the service, see [www.copyright.org.au](http://www.copyright.org.au) (click the Advice button) or our information sheet *Australian Copyright Council: who we are, what we do*.

### When can you use copyright material without permission?

There are no general provisions allowing people to use copyright material without permission for personal use, or for non-profit use. 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. Permission is generally needed to use copyright material in any of the following ways:

- copying in any way (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*.

You will not need permission if what you are using is not an important or distinctive part of the copyright material. (For further information on this issue, see our information sheet *Quotes & Extracts*). Nor will you need permission if an exception to infringement applies, such as one of the "fair dealing" exceptions — or the special provisions for educational institutions, libraries and governments. For information on these, see our information sheets *Libraries, Education institutions, and Governments (Commonwealth and State)*.

### "Blanket" licences

In many cases, it is possible to get a "blanket" licence to use certain copyright material from a copyright collecting society. This is not an exception to infringement, but, 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*.

## The “fair dealing” exceptions to infringement

Unlike the law in some other countries, there is no general provision in our Copyright Act allowing people to make “fair use” of copyright material without permission. As noted above, individuals and not-for-profit organisations do not have a general right to use copyright material in the ways reserved to the copyright owner. Rather, the law states that “fair dealing” with copyright material will not infringe copyright if it is done for any of the following purposes:

- research or study;
- criticism or review;
- 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 the person is genuinely using the material for one of the purposes set out in the Act, and whether their use of it is fair in that context.

Other factors that may be taken into account in determining whether a fair dealing defence applies 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).

In general, a person can only rely on a fair dealing defence for their 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 that 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 considered 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 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, investigative journalists may be able to use copyright material they have discovered that relates to past events under this provision.

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.

### Judicial proceedings

The Act also states that copyright material may be used for the purposes of a judicial proceeding, or reporting a judicial proceeding, without infringing copyright. There is no requirement in this context that the use be "fair".

## Common questions

### Can we rely on fair dealing for reporting news to put pages from the Internet into a newsletter?

In some circumstances, downloading material from the Internet and reproducing it in a newsletter may be a fair dealing for reporting news. However, it is unlikely that multiple reproduction and distribution of an entire document for these purposes would be regarded as a fair dealing if the Internet page contents are the whole of the news reported. Further, the use of the material is less likely to be regarded as fair if reproduction of it in a newsletter could be seen to compete with the original publication.

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

However, note that issues such as contract may also be relevant. For example, if you accessed the original document via a subscriber service, you may be prevented from reproducing any of it by the terms and conditions of your agreement with the service, even if your use of it would be permissible under copyright law.

### 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 an exception to infringement applies. Before taking legal action, you should seek legal advice as to whether the person is likely to be able to rely on the defence. For further information on infringement, see our information sheet *Infringement: what can I do?*

### **Can our community organisation copy extracts of recorded music onto CD-ROMs for teachers and students to critique, in an education package we are developing?**

As noted above, only the person making the criticism or review is entitled to rely on the fair dealing exception to infringement. In general terms, permission would be needed to copy the music and sound recordings in these circumstances. It might be possible to rely on the exception if the package included criticism or review of the music; however, in this context the materials are being provided for *other people* to critique or review.

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

A photocopying business is not entitled to photocopy material requested by a student 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 they could not rely on a fair dealing defence. However, they might be able to obtain a licence allowing them 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* and *Research or study*.

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, see our website – [www.copyright.org.au](http://www.copyright.org.au) or contact us.

Information from the Arts Law Centre of Australia may also be of interest to you: see [www.artslaw.com.au](http://www.artslaw.com.au); tel 02 93562566.

## **Reproducing this information sheet**

You may download and print one copy of this information sheet from our web site for your reference. Otherwise, we sell printed copies of information sheets to Australian customers for AUD\$5.50 each (we may be able to offer a discounted price for multiple copies of an information sheet).

## **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.



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