

FAIR USE AND FAIR DEALING IN FOREIGN COUNTRIES

AUSTRALIA¹

Fair Use or Fair Dealing

The fair dealing of a copyrighted work is not an infringement. However, fair dealing is limited to specific situations. The statute includes the following examples and provides additional details when they may apply:

- (1) Research or study.
- (2) Criticism or review.
- (3) Giving professional advice or in judicial proceedings.
- (4) Non-profit, archival, educational, charitable, or government uses.
- (5) Temporary reproductions made in the course of communication.
- (6) Inclusion of short extracts in collections for use by places of education. *Australia Copyright Act 1969, Secs. 40, 41, 43, 43A, 44, 49.*

Regarding reproduction for research and study, the determination of fair dealing is balanced on these factors:

- (1) Purpose and character of the dealing;
- (2) Nature of the work or adaptation;
- (3) Possibility of obtaining the work or adaptation within a reasonable time at an ordinary commercial price;
- (4) Effect of the dealing upon the potential market for, or value of, the relation to the whole work or adaptation; and
- (5) Amount and substantiality of the part copied in relation to the whole work. *Australia Copyright Act 1968, Sec. 40(2).*

Other specific exceptions to infringement

The Australian Copyright Act includes numerous exceptions, but they are usually narrowly crafted and apply only under specified circumstances, to narrow classes of works, and for specifically defined activities.

Some examples:

- (1) Reading or recitation in public of an extract of reasonable length if sufficient acknowledgment is made. *Australia Copyright Act 1968, Sec. 45.*
- (2) Reproducing and communicating works by libraries and archives for users, when a written request and declaration of the purpose for personal use is made for the reproduction and the user has not previously been supplied with the reproduction of the same work. *Australian Copyright Act 1968, Sec. 49.*

¹ http://copyright.surf.nl/copyright/files/International_Comparative_Chart_ZwolleIII_1104.pdf, pp. 7-8

CZECH REPUBLIC²

Fair Use or Fair Dealing

There is no broad statutory concept of “fair use” or “fair dealing.” However, the law provides a broad ability to exclude from copyright protection works that have a “public interest.” *Czech Republic Copyright Act, Art. 3(a)*.

Other specific exceptions to infringement

The Czech Republic Copyright Act includes numerous exceptions, but they are usually narrowly crafted and apply only under specified circumstances, to narrow classes of works, and for specifically defined activities.

Some examples:

- (1) The “free use” of a copyrighted work is not an infringement. “Free use” is limited to personal use in the reproduction or imitation of a work as long as it is for no other purpose than personal use. *Czech Republic Copyright Act, Art. 30*.
 - (2) Quotations, to a justified degree, or excerpts from the published works of other authors are not infringements, subject to always indicating the name of the author of the work being quoted or excerpted. *Czech Republic Copyright Act, Art. 31(a)*.
 - (3) Inclusion of small published works in their entirety into an independent scientific, critical, technical work, or a work designated for teaching purposes, for clarification of its content. *Czech Republic Copyright Act, Art. 31(b)*.
 - (4) Use of a published work in a lecture exclusively for scientific, teaching or other instructional or educational purposes. *Czech Republic Copyright Act, Art. 31(c)*. Preceding exemptions 2, 3, and 4 require indication of the name of the author of the work, title of the work, and source of the work being used. *Czech Republic Copyright Act, Art. 31(c)*.
 - (5) Copyright is not infringed by a library, archive, and other noncommercial school, educational, and cultural establishment which makes a reproduction of the work for archival or conservation purposes. *Czech Republic Copyright Act, Art. 37*.
- All of the restrictions specified may not be interpreted in a manner that would conflict with a normal exercise of copyright and would unreasonably prejudice the legitimate interests of the author. *Czech Republic Copyright Act, Art. 29*.

² http://copyright.surf.nl/copyright/files/International_Comparative_Chart_ZwolleIII_1104.pdf, p. 13

FRANCE³

Fair Use or Fair Dealing

There is no broad statutory doctrine of “fair use” or “fair dealing.”

Other specific exceptions to infringement

The French Intellectual Property Code contains a list of exemptions to economic rights, including:

- (1) Copies or reproductions reserved strictly for the private use of the copier and not intended for collective use. This exception only applies to works which have already been disclosed. *France Intellectual Property Code, Art. L. 122-5(2)*.
- (2) “Analyses and brief quotations justified on the grounds of the critical, polemic, educational, scientific, or informatory nature of the work in which they are incorporated, on condition the name of the author and source are clearly stated.” *France Intellectual Property Code, Art. L. 122-5(3)(a)*.
- (3) “Parodies, pastiches, and caricatures, with due consideration for the laws of this genre.” *France Intellectual Property Code, Art. L. 122-5(4)*.

³ http://copyright.surf.nl/copyright/files/International_Comparative_Chart_ZwolleIII_1104.pdf, p. 16

GERMANY⁴

Fair Use or Fair Dealing

German law includes no broad statutory concept of “fair use” or “fair dealing.” Other specific exceptions to infringement German Law on Copyright and Neighboring Rights includes numerous exceptions, but they are usually narrowly crafted to specific circumstances and specifically defined activities.

Some examples include:

(1) Reproduction, distribution, and making a work available is permissible where limited parts of certain works are incorporated after their publication in a collection, along with a considerable number of authors, for religious, school or instructional use. *German Law on Copyright and Neighboring Rights, Art. 46.* (2) Reproduction, distribution, and communication to the public shall be permitted, to the extent justified by the purpose, where individual works after their publication are included in an independent scientific work, where passages are quoted in an independent work of language, or where passages of published musical works are quoted in an independent work of music. *German Law on Copyright and Neighboring Rights, Art. 51.* (3) It is permissible to make copies of small segments of individual contributions published in newspapers or periodicals for personal use in teaching in non-commercial institutions of education and further education. *German Law on Copyright and Neighboring Rights, Art. 53.*

(4) Making available to the public small portions of published works, articles, individual contributions to periodicals, and other short works, exclusively for purposes of illustration for teaching, for students and other participants in instruction in schools, universities, post-secondary institutions, and noncommercial career-training institutions. Users may make reproductions of works as needed for this purpose. Access must be restricted to a limited circle of participants. Users must make a payment for such uses through a collective licensing society. *German Law on Copyright and Neighboring Rights, Art. 52a.*

⁴ http://copyright.surf.nl/copyright/files/International_Comparative_Chart_ZwolleIII_1104.pdf, pp. 18-19

THE NETHERLANDS⁵

Fair Use and Fair Dealing

There is no broad statutory concept of “fair use” or “fair dealing”.

Other Specific Exceptions

The Act includes numerous exceptions, which are narrowly crafted and apply under specified circumstances and specifically defined activities.

Some examples:

- (1) The use of published works made for use as illustrations for teaching purposes provided the work has been lawfully made public, is in accordance with social custom and the author and source has been clearly indicated. *The Netherlands Copyright Act 1912, Art 16(a)*.
- (2) Copying on a limited basis for the sole purpose of personal practice or private study exclusively for himself. *The Netherlands Copyright Act 1912, Art 16(b)*.

⁵ http://copyright.surf.nl/copyright/files/International_Comparative_Chart_ZwolleIII_1104.pdf, p. 21

SPAIN⁶

Fair Use or Fair Dealing

Spanish law includes no broad category for “fair use” or “fair dealing.” The Spanish Intellectual Property Act expressly states that the author’s rights are to be limited only “in cases this law provides.” *Spain Copyright Law, Art. 17.*

Other specific exceptions to infringement

The statute includes numerous exceptions, which are narrowly crafted and apply under specified circumstances and specifically defined activities.

Some examples:

(1) Copying fragments of others’ copyrighted works in one’s own work is permitted only as quotations or for analysis, comment or criticism, provided it is for teaching or research purposes. *Spain Copyright law, Art. 32.*

(2) Museums, libraries, and archives, if they are public or part of institutions of a cultural or scientific character, may reproduce works on a nonprofit basis exclusively for research purposes. *Spain Copyright Law, Art. 37.*

⁶ http://copyright.surf.nl/copyright/files/International_Comparative_Chart_ZwolleIII_1104.pdf, p. 23

SWEDEN⁷

Fair Use or Fair Dealing

No broad statutory limitation of “fair use” or “fair dealing.”

Other specific exceptions to infringement

A literary or artistic work may not be made available to the public under a title, pseudonym, or signature such that the work or its author may be easily confused with a work which has previously been made available to the public or with its author. *Sweden Copyright Act 1960:729, Sec. 53.*

The Sweden Copyright Act includes numerous exceptions, but they are usually narrowly crafted to specific circumstances and specifically defined activities.

Some examples:

(1) Anyone is entitled to make a copy of the work for his or her private use. *Sweden Copyright Act 1960:729, Sec. 12.*

(2) Archives and libraries may make reproductions of the work if within their purpose or activity, but must be in compliance with the rules and regulations set forth in copyright regulation. *Sweden Copyright Act 1960:729, Sec. 16.*

(3) Quotations from a work already made public may be made without liability if they conform to proper usage, and if they do not exceed the scope required by the purpose of quoting the work. *Sweden Copyright Act 1960:729, Sec. 22.*

⁷ http://copyright.surf.nl/copyright/files/International_Comparative_Chart_ZwolleIII_1104.pdf, pp. 25-26.

SWITZERLAND⁸

Fair Use or Fair Dealing

There is not a broad statutory limitation to copyright of “fair use” or “fair dealing.”

Other specific exceptions to infringement

There are numerous, narrowly crafted exceptions to copyright where the acts specified are not considered infringements, although these acts are not always exempt from remuneration.

Some examples include:

- (1) Any personal or family use.
- (2) Any use of a teacher for teaching a class.
- (3) Reproduction of copies of a work in enterprises, public administrations, institutes, commissions, and similar bodies for internal information or documentation. *Switzerland Federal Law on Copyright and Neighbouring Rights of October 9, 1992, Art. 19(1a,b,c).*
- (4) A copy, including a copy of computer programs, may be made to preserve it, although a specimen must be archived where there is no public access. *Switzerland Federal Law on Copyright and Neighbouring Rights of October 9, 1992, Art. 24.*
- (5) Published works may be quoted, but only if and as far as the quotation serves as a reference or illustration and the source of the quotation is designated, including the eventual name of the author. *Switzerland Federal Law on Copyright and Neighbouring Rights of October 9, 1992, Art. 25.*

⁸ http://copyright.surf.nl/copyright/files/International_Comparative_Chart_ZwolleIII_1104.pdf, p. 28

UNITED KINGDOM

Fair Use or Fair Dealing⁹

“Fair dealing” in a copyrighted work is a major exception to copyright in UK law and is a term used to describe acts which are permitted to a certain degree. These uses include (among others):

- (1) Making of incidental transient or temporary copies. *United Kingdom Copyright, Designs and Patent Act 1988 (as amended) s. 28A.*
- (2) Private and research study purposes. *United Kingdom Copyright, Designs and Patent Act 1988 (as amended) s. 29.*
- (3) Performance, copying or lending for educational purposes. *United Kingdom Copyright, Designs and Patent Act 1988 (as amended) s. 29.*
- (4) Criticism and news reporting. *United Kingdom Copyright, Designs and Patent Act 1988 (as amended) s. 30.*
- (5) Incidental inclusion of copyrighted material. *United Kingdom Copyright, Designs and Patent Act 1988 (as amended) s. 31.*

Other specific exceptions to infringement¹⁰

The Act includes numerous exceptions to copyright, which are narrowly crafted and apply under specified circumstances and specifically defined activities.

Some examples:

- (1) Copies of literary, dramatic, musical, or artistic works if done in the course of instruction or of preparation for instruction if prepared by the one giving the instruction and accompanied by sufficient acknowledgement. *United Kingdom Copyright, Designs and Patent Act 1988 (as amended) s. 32(1).*
- (2) The librarian of a prescribed library may, under the prescribed conditions, make and supply from a published edition a copy of part of a literary, dramatic, or musical work (other than an article in a periodical) without infringing copyright in the work, in any illustrations accompanying the work or in the typographical arrangement.
United Kingdom Copyright, Designs and Patent Act 1988 (as amended) s. 39.
- (3) The librarian of a prescribed library may, under the prescribed conditions, make and supply a copy of an article in a periodical if used for research for a non-commercial purpose or private study. *United Kingdom Copyright, Designs and Patent Act 1988 (as amended) s. 38.*

Fair Dealing¹¹

- Private and research study purposes.
 - Performance, copies or lending for educational purposes.
 - Criticism and news reporting.
 - Incidental inclusion.
 - Copies and lending by librarians.
 - Acts for the purposes of royal commissions, statutory enquiries, judicial proceedings and parliamentary purposes.
 - Recording of broadcasts for the purposes of listening to or viewing at a more convenient time, this is known as time shifting.
 - Producing a back up copy for personal use of a computer program.
 - Playing sound recording for a non profit making organisation, club or society.
- (Profit making organisations and individuals should obtain a license from PRS for Music.)

⁹ http://copyright.surf.nl/copyright/files/International_Comparative_Chart_ZwolleIII_1104.pdf, pp. 31-32

¹⁰ http://copyright.surf.nl/copyright/files/International_Comparative_Chart_ZwolleIII_1104.pdf, pp. 31-32

¹¹ http://www.copyrightservice.co.uk/copyright/p01_uk_copyright_law

UNITED STATES¹²

Fair Use or Fair Dealing

The fair use of a copyrighted work is not an infringement. Fair use can involve reproduction or any other uses that might otherwise be infringement. Determination of fair use is based on a balanced application of these four factors:

- (1) The purpose or character of the use.
- (2) The nature of the work being used.
- (3) The amount of the work used.
- (4) The effect of the use on the potential value of or market for the work.

U.S. Copyright Act, 17 U.S.C. Sec. 107.

Fair use sometimes sanctions: common quoting; limited photocopying; creative or “transformative” uses of copyrighted works; uses that do not interfere with realistic markets for the original work.

Other specific exceptions to infringement

The U.S. Copyright Act includes numerous additional exceptions, but they are usually narrowly crafted and apply only under specified circumstances, to narrow classes of works, and for specifically defined activities.

Some examples:

- (1) Copying of some works in libraries for preservation, giving copies to researchers, and sending copies through interlibrary loan. *U.S. Copyright Act, 17 U.S.C. Sec. 108.*
- (2) Selling, lending, renting, or otherwise transferring possession of “lawfully made” copies. *U.S. Copyright Act, 17 U.S.C. Sec. 109(a).*
- (3) Displaying works publicly at the location where the works are located, such as paintings in a museum or books in a library. The display may be direct, or may be by projection of not more than one image at a time. *U.S. Copyright Act, 17 U.S.C. Sec. 109(c).*
- (4) Displaying or performing works in classrooms at nonprofit educational institutions. *U.S. Copyright Act, 17 U.S.C. Sec. 110(1).*
- (5) Displaying or performing works in the context of distance education, but subject to elaborate requirements and restrictions. *U.S. Copyright Act, 17 U.S.C. Sec. 110(2).*
- (6) Making copies of some works in special formats for persons who are blind or have other disabilities. *U.S. Copyright Act, 17 U.S.C. Sec. 121.*

¹² http://copyright.surf.nl/copyright/files/International_Comparative_Chart_ZwolleIII_1104.pdf, pp. 34-35.