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## Fair Dealing

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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 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 [www.copyright.org.au](http://www.copyright.org.au) to make sure this is the most recent version, and for other information such as our seminar program.

### Key points

- The Copyright Act allows "fair dealing" with copyright material for certain specified purposes.
- Unlike US copyright law, Australian law does not have a general "fair use" defence.

### When are the fair dealing exceptions relevant?

If you are using copyright material in ways reserved to the copyright owner, you generally need permission to use it, unless:

- copyright has expired (see our information sheet *Duration of copyright*); or
- you are using less than a substantial part of the material (see our information sheet *Quotes & Extracts*); or
- one of the specific exceptions to infringement applies.

In this information sheet, we look at the fair dealing exceptions. Other important exceptions include:

- special provisions for educational institutions (see our information sheet *Education: Copyright Basics*);
- special provisions for libraries (see our information sheet *Libraries: Introduction to Copyright*);
- special provisions for governments (see our information sheet *Government: Commonwealth, State and Territory*);
- Private copying exceptions (see our information sheet *Copying & Converting Formats for Private Use*);
- Other special cases (see our information sheet *Special Case or Flexible Dealing Exception: Section 200AB*).

## The “fair dealing” exceptions to infringement

There is no general exception for using copyright material simply because you think it is fair or because you are not making a profit. The Copyright Act allows you to use copyright material without permission if your use is a “fair dealing” for one 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 one 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 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). 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 rely on a fair dealing defence only 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 photograph and invite other people to critique it. 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”, if you are reproducing the material. 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 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 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”. 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 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 licenses 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. However, music in news reports is not covered by 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’ licences from APRA and PCCA. For further information on these licences, 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.

There are also special exceptions allowing use of copyright material for the purpose of a legal proceeding (for example, for use in court).

### **Common questions**

#### **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 he or she considers the use was a fair dealing. Before taking legal action, you should seek legal advice. For further information on infringement, see our information sheet *Infringement: What Can I Do?*

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

The reproduction may be a 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 for criticism or review. Permission would be needed.

### **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 from CAL allowing it to make some copies in these circumstances (for example, 10% or one chapter of a book). See also our information sheet *Copying Services*.

The Australian Publishers' Association has 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 – [www.copyright.org.au](http://www.copyright.org.au)

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 and libraries. For information about the service, see [www.copyright.org.au](http://www.copyright.org.au)

### **Reproducing this information sheet**

Our information sheets are regularly updated - please check our website to ensure you are accessing the most current version. Should you wish to use this information sheet for any purpose other than your reference, please contact us for assistance.

### **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 Australian Government through the Australia Council, its arts funding and advisory body.*

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