

Fair Dealing: What Can I Use?

In this fact sheet, we give a brief overview of copyright law relating to the use of copyright material, without the copyright owner's permission, for specified fair dealing purposes.

Our [Copyright Essentials](#) book provides in-depth guidance on the provisions of the *Copyright Act 1968* (Cth) (**Copyright Act**) set out in this fact sheet. It is available for purchase from our [website](#). Information about our education programs is available [here](#).

This fact sheet gives general introductory information about copyright. If you need to know how the law applies in a particular situation, we recommend you seek legal advice.

Key points

- The Copyright Act contains exceptions to copyright infringement for fair dealing with copyright material for specified purposes.
- The dealing must be for the specified purpose and must be 'fair' in all the circumstances.

1. Copyright law and exceptions

Australian copyright law includes a network of exceptions for specific uses and/or specific purposes, particularly for the education and cultural sectors.

There are also licensing arrangements enshrined in the Copyright Act which enable users to use copyright material without seeking individual permission for each use. For example, see the statutory licence for educational institutions and for government which permits the use of copyright material without the permission for certain purposes provided a remuneration notice is in place with Copyright Agency, for text and images and/or Screenrights for broadcast material.

See our fact sheets, [Education: Copyright Basics](#) and [Government: Commonwealth, State and Territory](#).

For a use of material (without permission or a licence) not to be considered an infringement of copyright, it must fall under one of the exceptions to copyright infringement. The fair dealing exceptions are some of these. A list of the exceptions to copyright infringement in the Copyright Act may be found in our [Exceptions to Copyright Infringement](#) fact sheet.

2. When are the fair dealing exceptions relevant?

The fair dealing exceptions are relevant when you are using the whole or a substantial part of copyright material in one of the exclusive ways reserved to the copyright owner (e.g. reproduction) and:

- (a) copyright has not expired (see our fact sheet [Duration of Copyright](#)), and
- (b) you do not have permission from the copyright owner (see our fact sheet [Permission: Do I Need It?](#)).

See also our fact sheet [Quotes and Extracts](#).

3. The fair dealing exceptions to copyright infringement

Under the fair dealing exceptions listed in the Copyright Act, copyright material may be used without permission if your use is for one of the **specified purposes** and is **also fair**. These purposes are:

- research or study
- criticism or review
- parody or satire
- reporting news
- enabling a person with a disability to access the material
- professional advice by a lawyer, patent attorney or trade mark attorney
- judicial proceedings or reporting judicial proceedings.

Australia's fair dealing provisions are different to the concept of 'fair use' copyright laws of the United States. While US law suggests a number of purposes that may be considered to be within the scope of fair use (such as scholarship, research or news reporting) it does not set out all such purposes. So, the circumstances in which fair use may apply are less certain than those that fall within the specific fair dealing exceptions that apply in Australia.

3.1 What does 'fair dealing' mean?

In this context, a 'dealing' with copyright material is use of the material in any of the ways reserved to the copyright owner (e.g. to reproduce). Whether a dealing is 'fair' will depend on all of the circumstances of the use.

The factors that may be taken into account to determine whether a use is fair include whether the person using the material for commercial purposes and whether the copyright owner may be out of pocket from the use (e.g. 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.

3.2 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 allows for the reproduction of a 'reasonable portion' of certain works for the purpose of research or study.

For a literary, dramatic or musical work the use cannot be more than 10% of the number of total pages in a published edition or a single chapter for research or study purposes.

For a published literary or dramatic work in electronic format, a reasonable portion means 10% of the number of words or a single chapter (if the work is divided into chapters).

This is discussed in more detail in our [Research or Study](#) fact sheet.

3.3 Fair dealing for criticism or review

Genuine criticism or review of a literary, dramatic, musical or artistic work, or of an audio-visual item, will not be considered to be an infringement of copyright in that work or audio-visual item, provided that there is sufficient acknowledgement of the work or audio-visual item.

The criticism or review may relate to the work being used or to other material. For example, television film reviewers may be able to show clips from other films as well as the one they are reviewing, especially when making a comparative criticism or review.

The purpose of criticism or review must be genuine. If the person has other motives – especially if the 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.

3.4 Fair dealing for parody or satire

The terms parody and satire are not defined in the Copyright Act. However, the courts have stated:

- a parody is, at its essence, where a work is imitated or evoked in a humorous way yet with such revision and alteration producing an original work, and
- a satire is a form of ironic, sarcastic, scornful, derisive or ridiculing criticism of vice, folly or abuse, but not by way of an imitation or take-off.

The difference between parody and satire may be of importance. Parody alone seems to require humour and some imitation, while satire may require criticism without imitation. However, if a purpose of use is purely commercial or to profit from an original work’s popularity, this exception may not apply or be able to be relied upon.

For further detail, see our fact sheet [Parody, Satire & Comedy](#).

3.5 Fair dealing for reporting news

Copyright material may be used in reporting news in a newspaper, magazine (or similar periodical) or film, or by means of a broadcast provided that the use is fair. There must be a sufficient acknowledgement of the author and title of the work.

News is not restricted to current events. For example, old material or footage of past events that are relevant to current news events, may be used under this exception. The crucial element in determining whether the exception applies is whether the primary purpose is to report or comment on news. Although the news may involve the use of humour, if the purpose of using the material is primarily to entertain, the presence of newsworthy issues is unlikely to be sufficient to make the use a fair dealing.

3.6 Fair dealing for access by or for persons with a disability

These exceptions aim to improve access to copyright material for persons with a disability, directly or through an organisation assisting them. For the purposes of this fair dealing exception, a relevant disability is one which causes a person difficulty in reading, viewing, hearing or comprehending copyright material in a particular form.

For more information, see our [Disability Access & Copyright](#) fact sheet.

3.7 Fair dealing for professional advice and judicial proceedings

Copyright material may be used for the purpose of giving professional advice by a lawyer, patent attorney or trade mark attorney. This exception also allows use of copyright material in legal proceedings (e.g. for use in court) and the reporting of them.

Further information and advice

We have a range of other fact sheets on specific topics and publish books that focus on particular interest groups. Check our website for information about our publications [here](#) and details of our seminar/webinar program [here](#).

An Australian Copyright Council lawyer may be able to give you free preliminary legal advice about an issue not addressed in a fact sheet. This service is primarily for professional creators and arts organisations but is also available to staff of educational institutions and libraries and members of our [affiliate organisations](#). For further information about the service, see [Legal Advice](#) on our website.

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

About us

The Australian Copyright Council is an independent, not-for-profit, non-government, community legal service. Founded in 1968, we represent the peak bodies for professional artists and content creators working in Australia's creative industries. Our objectives include:

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

The Australian Copyright Council acknowledges the Traditional Owners and Custodians of the lands on which our office is located, the Gadigal people of the Eora nation, and all Traditional Owners of Country throughout Australia. We pay our respects to all Elders past and present, and recognise their continuing great, creative and cultural expressions.



The Australian Copyright Council is assisted by the Australian Government through Creative Australia, and the Government of South Australia through Create SA, its principal arts funding and advisory body.

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