

Fair Use and Fair Dealing for Libraries

Fair use and fair dealing give you the right to use copyrighted works without asking permission, under certain conditions. They make it possible for libraries to provide their public service. Here's how they work:¹

Fair Use

Where?

United States, South Korea, Israel, Philippines, Bangladesh, Bahamas, Singapore.²

How does it work?

If a use is fair, it's allowed.³ Definitions of 'fair' vary, but there are four factors you should consider in the United States:⁴

1. The **purpose** and **character** of the use: is the use commercial? Is it new or transformative?
2. The **nature** of the work: how creative was it? Is there a public interest in its availability?
3. The **amount** and substantiality of the portion used: how much of the original is used?
4. The **effect** on the original work's value: does the use mean fewer people will buy the original?

Fair Dealing

Where?

Canada, Australia, United Kingdom, South Africa, New Zealand, India.¹⁴

How does it work?

Uses are limited to certain users, works or purposes, such as research, study, criticism, journalism, parody or satire. It also needs to be decided, in all these cases, whether the use is fair. Here's what you should consider in Canada:

1. Its **purpose**: is the use commercial or not?
2. Its **character**: is the use new or transformative?
3. The **nature** of the work: how original is the use?
4. Its **amount**: how much of the work is being used?
5. Its **effect** on the work: does it stop people from buying it?
6. **Alternatives** to it: could you use another work?

What does it mean in practice?

Fair Use

Under fair use, libraries and their users are usually able to do the following:

Copy excerpts of works for researchers



Copy works for educational purposes⁵



Carry out text and data mining⁶



Digitize to preserve at-risk items⁷



Digitize works to increase accessibility for the print disabled⁸



Fair Dealing

Under fair dealing, libraries are usually able to do the following:

Copy excerpts of works for researchers,

up to a certain amount: for example one article from a journal, or up to 10% of a book⁹

Copy works for educational purposes

only a "short excerpt" of 10% or less of a work, or no more than one chapter from a book¹⁰

Carry out text and data mining only for researchers¹¹

Digitize to preserve at-risk items¹⁵

Digitize works to increase accessibility for the print disabled¹²

Pros and Cons

Flexible, broad

The framework responds easily to technological change

but

Legal uncertainty

Only a court can ultimately determine if a use is fair¹³



Pros and Cons

Greater certainty

It offers legal certainty by stating clearly what may be fair

but

Less flexibility

It leads to legal frameworks that may not relate to the digital world

1. The document gives an overview of the systems, without noting all the details. It does not intend to provide for any legal advice.
2. Although Singaporean law uses the term fair dealing, the exception is open ended and is therefore fair use in practice.
3. Note that fair use can also be complemented by exceptions and limitations to copyright law, e.g. Section 108 US Copyright Act.
4. See ALA's fair use evaluator: <http://librarycopyright.net/resources/fairuse/index.php>
5. See ARL's Code of Best Practices in Fair Use for Academic and Research Libraries: <http://www.arl.org/storage/documents/publications/code-of-best-practices-fair-use.pdf>
6. See ARL's "Issue Brief: Text and Data Mining and Fair Use in the United States": <http://www.arl.org/storage/documents/TDM-5JUNE2015.pdf>
7. Idem 5
8. The Authors Guild, Inc. et al v. Hathitrust et al Case. Available here: <https://cases.justia.com/federal/district-courts/new-york/nysdce/1:2011cv06351/384619/156/0.pdf>

9. In the UK. See "Fair Use Copyright Explained", <https://www.bl.uk/business-and-ip-centre/articles/fair-use-copyright-explained>
10. In Canada. See "Fair dealing policy for universities": <https://www.univcan.ca/media-room/media-releases/fair-dealing-policy-for-universities/>
11. Idem 9
12. In Australia. See "New Disability Provisions in the Copyright Act": <http://libcopyright.org.au/sites/libcopyright.org.au/files/documents/New%20disability%20provisions%20in%20the%20Copyright%20Act.pdf>
13. However, it is not necessary to wait for legal precedents to emerge in the country in question – these can be 'imported' from decisions in other countries that have adopted the same regime.
14. This is a non-exhaustive list. For more details, see The Fair Use/Fair Dealing Handbook, by Jonathan Band and Jonathan Gerfai, available here: <http://infojustice.org/wp-content/uploads/2015/03/fair-use-handbook-march-2015.pdf>
15. This can also be the subject of a specific exception.