# What is Fair Dealing?

Before examining the brief summary of the UK copyright exceptions on the following pages, it’s important to have a grasp of the legal concept of ‘Fair Dealing’. This concept is intertwined with all the UK copyright, however has no legal definition. To aid in explaining this concept, the text below, provides criteria you should consider when applying fair dealing use, as this will aid you in determining if the use is indeed fair.

There were changes made to UK law in 2014 that affect copying & sharing of materials for educational use. Some new exceptions to UK Law were introduced and some exceptions were amended. Educational Copyright exceptions only apply if the use of a copyright work is fair.

Fair Dealing is a framework designed to allow the lawful use of work without having to seek permission from a copyright owner. When you make use of Fair Dealing, the following factors must be considered:

* Will the material you use impact on the rights holder’s ability to market or sell the work? If so, then this is not fair.
* Consider the amount of work you want to use. Fair dealing does not specify how much of a work you can copy but it must not impact economically on the copyright owner. Aside from the quantity, you should also consider the quality of work you are using. Is the 'small' extract of work you want to use a key piece of information?
* You must provide sufficient acknowledgement of the rights holder unless it is impossible to do so
* The use of the work is only fair if used for non-commercial purposes.

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| **Summary of UK Copyright Exceptions** | | |
| **Exception** | **Description** | **Limitations** |
| **S.29 Research or Private study** | Providing the usage is for non-commercial research or private study, individuals can produce a single copy of limited extracts of from all types of copyright works including sound recordings and films. **No contractual override** | * Is subject to Fair Dealing * Cannot be used for distribution or sharing material via a VLE (i.e. Moodle) * Copies cannot be circulated or distributed to students |
| **S.29a Text & Data Mining (TDM)** | Providing the usage is for non-commercial research, an individual can use software to produce a computational analysis of lawfully acquired digital content, i.e. a database. **No contractual override** | * Can’t be used to circumvent technical measures, i.e. if a publisher has measures in place to block downloads, then no researcher should act to circumvent the measures in place |
| **S.30 Quotation (Criticism and Review)** | This exception allows any type of work (except photos cannot be used for news reporting), to be quoted for any purposes (including criticism and review) under ‘fair dealing’ usage. **No contractual override** | * Is subject to Fair Dealing * The work has been made available to the Public (excluding unpublished material) * The amount of quotation is no more than required by the specific purpose for which it is being used |
| **S.30a Caricature, Parody or Pastiche** | Providing Fair Dealing is applied to the usage, any type of copyright work can be used in the spirit of humour or mockery, commentary on social or wider issues. **No contractual override** | * Is subject to Fair Dealing * Consideration should be given to the amount of content that is being parodied, use no more than required * If the parody is used in any commercial way, it is recommended to seek permission from the rights holder |

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| **S.31 Incidental Inclusion** | Providing the use is ‘incidental’, this exception allows copyright works to be incorporated into artistic works | * Team logos and football strips in sticker albums cannot be included * The exception does not cover the deliberate use of musical works, sounding recording or words spoken or sung with music |
| **S.31a – f Accessbile Copying** | This exception allows whole or parts of copyright works (which are lawfully obtained) to be copied for users who have either physical or mental disability, as an individual (S.31a) or institution (S.31b). **No contractual override** | * Exception doesn’t address the use of Digital Rights Management (DRM) or technical protection measures some materials may employ |
| **S.32 Illustration for Instruction** | This exception allows limited, copyright works to be used for teaching purposes, providing its for non-commercial purposes and Fair Dealing is applied to the usage. For example, the inclusion of copyright images in educational PowerPoint slides, which are uploaded to a VLE, i.e. Moodle, Blackboard. **No contractual override** | * Is subject to Fair Dealing * Covers all types of Copyright works, including sound recordings, film and televised broadcasts * As always, sufficient acknowledgement must be given to the source and its rightsholder when using copyright works |

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| **S.34 Performing, playing or showing work for educational purposes** | This exception allows the performance, playing or showing of copyright works, providing its directly connected with the activities of an educational institution, to an audience of staff and students. | * Excludes members of public, even parents of students who attend the educational institution * If a performance is going to be for the public, written permission from the rights holder must be obtained beforehand * This exception doesn’t cover the screening of films by film societies |
| **S.35 Recording of Broadcasts** | This exception allows the recording of free view televised programming by or on behalf of educational establishments for non-commercial purposes.  **Note, this exception is only applicable when an ERA licence is not in place** | * Recoding can be done on and off premises (providing access is through a secure electronic network) * If an ERA license is in place, then this takes precedence * It’s not permissible to make recordings available on the following online platforms:   + MOOCs   + Publicly accessible webpages or sites   + Social Media platforms, e.g. YouTube |
| **S.36 Educational copying of published works** | Where no licence is available (i.e. CLA), an individual UK institution can make single or multiple copies of extracts from copyright works within a 12-month period. | * The amount copied within a 12-month period, cannot exceed 5% of a work (excludes broadcast and artistic work) * If an CLA license is in place, then this takes precedence * Note, it can be challenging to track the use of this exception within an institution |

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| **S.40b Dedicated Terminals** | This exception permits educational establishments, museums and archives to make any copyright works available via dedicated terminals on the premises, for the purposes of research and private study. | * The works must be communicated in compliance with any purchase or licensing terms associated with the work * The works must be lawfully acquired |
| **S.41 Library to Library Copying** | Allows libraries to make and supply a copy of published work (i.e. single journal articles or whole part of publication) to another non-profit library for use in their collection. **No contractual override**  **Note, this exception should not be confused with Inter Library Loan (ILL), as this is for loans, whereas the exception is used if a library is looking to add books/journals to their collection** | * Recoding can be done on and off premises (providing access is through a secure electronic network) * If an ERA license is in place, then this takes precedence * It’s not permissible to make recordings available on the following online platforms:   + MOOCs   + Publicly accessible webpages or sites   + Social Media platforms, e.g. YouTube |
| **S.42 Library Preservation** | Allows a Library, archives and Museums to make replacement or preservation copies of items within their permanent collection.  **No contractual override** | * All types of copyright work can be copied; however, they cannot be publicly accessible or available on loan to other Libraries, archives or Museums * The exception can’t be used if its reasonably practicable to purchase a copy of the item for the purposes of preservation/replacement |

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| **S.42a Copying for Library users** | This exception allows libraries to make a single copy of reasonable portions of copyright protected work for their patrons, for non-commercial research, private study. **No contractual override** | * Library patrons must produce a written copyright declaration, confirming the use is non-commercial * Can be difficult to judge what a ‘reasonable’ amount is, when dealing with non-textual types of work |
| **S.43 Library Copying of Unpublished Works** | Allows Librarians to make a single copy of whole or part of an unpublished work for the sole purpose of their patrons for non-commercial research and private study. | * Library patrons must produce a written copyright declaration, confirming the use is non-commercial * Any type of work can be copied, providing it was not published prior to deposit in the library and the rights holder has not prohibited copying |
| **S.44B Permitted uses of Orphan Works** | Providing a diligent search has been carried out, a cultural heritage institution (such as, Libraries, museums, archives and educational establishments) can make orphan works available online non-commercially | * Searches that are carried out, must be recorded on the EU Intellectual Property orphan works database * A copy of the work may be produced for digitisation, preservation, cataloging and indexing |

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| **S.45 – 50 Public Administration** | This exception is more geared towards public bodies, keepers of statutory registers. This exception allows copyright work to be copied for the purposes of Parliamentary or Judicial including Royal Commissions or statutory inquiries | * Public bodies cannot publish materials (physically and online) that are commercially available to buy or license. In these circumstances written permission from the rights holder would have to be sought * Copies can be produced, but one the court proceedings or public enquiry end, no further copies can be made |