Copyright basics for general audience: staff, students, and researchers

Version 1: 07/11/2022 | This document contains non-legal guidance for the following areas: What is Copyright (UK Law), Fair Dealing, & Copyright Exceptions

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# Copyright (UK Law)

Copyright is a legal protection, automatically assigned to a piece of work as soon as it is in a fixed format (e.g., written or recorded). Copyright protects the works of authors and performers for a specific period of time. The current copyright legislation in the United Kingdom is the [Copyright and Patents Act 1988](http://www.legislation.gov.uk/ukpga/1988/48/contents). The act has been amended several times, so it is important you consult the most up to date version.

There are currently four areas, which must be met for your work to receive copyright protection, these are listed below:

 1 of 4. **Original** – The work must be original, i.e. you must have created it and not copied from anyone else.

2 of 4. **Fixed** - Copyright does not protect ideas. Works must be presented in a physical form to receive copyright protection.

3 of 4. **The types of works that are currently protected** - Copyright protects work that fall under one of the categories below:

* Literary Works
* Dramatic Works
* Musical Works
* Artistic Works
* Sound Recordings
* Films
* Broadcasts
* Typographic arrangements of published editions
* Websites

4 of 4. **UK Nationality, domicile, or residence or first publication in the UK** - For a work to be protected under the UK's copyright laws, the author's nationality, domicile or residence must be in the UK or else the work must have been first published in the UK (this would include where it has been simultaneously published elsewhere within 30 days).

Copyright exists automatically when qualifying work is created, but many people use the copyright symbol to make this clear, e.g., ‘John Smith ©

# Fair Dealing (UK)

Fair Dealing is a legal framework designed to allow the lawful use of copyright protected work without having to seek permission from the author under certain circumstances. Sufficient acknowledgement must be provided to the author when their work is used unless it is impossible to do so.

There is no legal definition of what Fair Dealing is, however the [CDPA](https://www.gov.uk/guidance/exceptions-to-copyright#fair-dealing) does refer to some case law (a legal test) which does provide some factors that should be considered when trying to decide if a use is considered fair or not. A direct quote of these factors can be viewed below:

* *“Does using the work affect the market for the original work? If a use of a work acts as a substitute for it, causing the owner to lose revenue, then it is not likely to be fair –* ***will using the work impact the owner (rightsholder) negatively financially; if so, the use is less likely to be considered fair****?*
* *is the amount of the work taken reasonable and appropriate? Was it necessary to use the amount that was taken? Usually, only part of a work may be used”* ***– in other words, only use the amount of the work(s) required to fulfil your purpose***
* *unless it is impossible to do so for reasons of practicality, you must provide attribution (credit) when making use of someone else’s work*

***N.B, Fair Dealing should not be confused with Fair Use, which is legal framework used in other countries, like America and Australia and exclusive to these countries.***

# Other measures that can be used to aid making use more “fair”

Aside from the above ‘Fair Dealing factors’, you could also consider implementing the following technical measures to help increase the usage being considered “fair”. Some of the measures outline below, will be for specific uses and audiences.

## For everyone (staff, students, and researchers)

* Wherever possible try to make use of [low-resolution](https://www.computerhope.com/jargon/l/low-resolution.htm#:~:text=%22Low%20resolution%22%20is%20a%20relative,may%20appear%20blurry%20or%20indistinct.) copies of images.
* Only show the amount required to fulfil your purpose, e.g., don’t show an entire 60-minute interview, if all you need is a 10-minute excerpt to illustrate your teaching point.
* Make sure you have provided attribution when using someone else’s work

## Fair Dealing Measures teaching staff can implement when using copyright protected materials online

* The materials (e.g., images, film clips, audio etc..) must be shown for educational purposes.
* Make the materials available only to enrolled students via a password protected environment like Moodle, Blackboard, Canvas etc...
* The materials are only made available when required, e.g., students can only access the materials for a specific week and no longer, they can always be made available again. Resources can be hidden and shown again in platforms like Moodle, so this is another method of controlling the availability of materials within this platform.
* Content should have measures in place to make sure it cannot be downloaded or recorded.

# UK Copyright exceptions

The UK copyright exceptions allow copyright protected materials to be used under specific circumstances, and providing the usage is considered “Fair” (see previous section on “Fair Dealing”).

**N.B, the UK copyright exceptions should only be considered if no suitable licence is in place, i.e.,** [**CLA**](https://www.cla.co.uk/) **and other alternatives have been explored, i.e., media that has a Creative Commons licence associated with it.**

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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](https://www.gov.uk/guidance/exceptions-to-copyright#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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| **Summary of UK Copyright Exceptions** |
| **Exception** | **Description** | **Limitations** |
| **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
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| **S.32 Illustration for Instruction** | This exception allows excerpts of copyright works to be used for non-commercial teaching purposes in alignment with Fair Dealing usage. Can be used in face-to- face and secure online environment, i.e., Moodle (could potentially be uploaded to public platform like YouTube, but associated risk is greatly increased, consider carefully if you choose to do so). **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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| **Summary of UK Copyright Exceptions** |
| **Exception** | **Description** | **Limitations** |
| **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
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| **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 should only be considered if an ERA licence is not in place. If a streaming service like** [**Box of Broadcast**](https://learningonscreen.ac.uk/bob/) **is place, you should also examine this for content before using the exception.**  | * 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**](https://www.cla.co.uk/) 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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| **Summary of UK Copyright Exceptions** |
| **Exception** | **Description** | **Limitations** |
| **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 a license (e.g., CLA) 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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| **Summary of UK Copyright Exceptions** |
| **Exception** | **Description** | **Limitations** |
| **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
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| **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
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| **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 | * As of the 1st of January 2021, this exception has been repealed from UK copyright law (due to leaving the EU), leaving licensing as the only option.

More information can be found in CREATe’s [**Orphan Works page**](https://www.copyrightuser.org/understand/exceptions/orphan-works/) |

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| **Summary of UK Copyright Exceptions** |
| **Exception** | **Description** | **Limitations** |
| **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
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