

Using material protected by copyright

A guide to fair dealing and certain exceptions to copyright

1. General information

Many items in the National Library of Scotland's collections are protected by copyright. Copyright protects a wide-range of works, including written materials, artistic works, sound recordings, and films. Unpublished materials are often protected for a long period of time: most remain in copyright until the end of 2039. For other materials, such as published books or artistic works, copyright normally lasts for 70 years after the year in which the last living author or creator died.

Copyright reserves the control of a number of activities to the copyright owner(s). These are:

- Copying the work, including any activity that recreates a work, such as photocopying, photographing, or transcribing text
- Issuing copies of the work to the public
- Renting or lending the work to the public
- Performing, showing or playing the work in public
- Communicating the work to the public
- Making an adaptation of the work.

Normally, it is an infringement to use any substantial part of a work protected by copyright for one of the reserved acts without permission from the copyright owner. However, there are a number of legal **exceptions to copyright**, which allow the limited use of works for specific purposes without the need to seek permission.

Many exceptions are based on '**fair dealing**'. Fair dealing is a qualification and requires that a person using a work considers whether her or his actions are truly fair to the copyright owner. This is explained more below.

This guide is only for information and should not be considered a substitute for legal or official advice. For more information on copyright and the exceptions please visit www.gov.uk/exceptions-to-copyright or consult the Copyright, Designs and Patents Act 1988 at www.gov.uk/government/publications/copyright-acts-and-related-laws.

2. Fair dealing

Many exceptions to copyright are based on 'fair dealing'.

'Fair dealing' does not have a statutory definition. In general, the term means that to benefit from a particular exception you must be acting **fairly** with the copyright-protected work.

Fair dealing means using a work fairly.

When considering whether your use is fair, you may want to consider:

- How would a fair-minded and honest person deal with the work(s)?
- Will your actions affect the market for the original?
- Is the amount you are using no more than is necessary for your specific purpose?
- Are you using a reasonable, appropriate, and limited amount of the work?

Depending on the material, your purpose, and the particular exception to copyright on which you are relying, these factors will have varying degrees of significance. For example, a work that is commercially viable will probably be harder to treat fairly than a very old work that has little or no commercial value.

There are no set quantities or amounts that make a dealing 'fair' or 'unfair'. For example, it may not always be 'fair' to copy 5% of a work for private study, nor may it always be 'unfair' to copy 80% of a work for private study.

General guidelines:

- The **less** of a work that you use, the more likely it is that your use may be considered fair
- Clear **attribution** of the item, author, and source may help your use to be considered fair
- Uses that **do not compete** with the copyright owner's use of the work and the copyright may be more likely to be considered fair.

Fair Dealing guidance from the United Kingdom's Intellectual Property Office is available:

www.gov.uk/exceptions-to-copyright#fair-dealing

3. Exceptions to copyright

Chapter III of the Copyright, Designs and Patents Act 1988 outlines the 'Acts Permitted in relation to Copyright Works', otherwise known as the **exceptions to copyright**.

When using this guide and the table on the next page, please keep in mind:

- Chapter III of the Act extends over more than 35 pages, so the table on the next page only provides a **basic outline of a few exceptions** that are likely to be useful in a library
- Most of the exceptions outlined below are based on 'fair dealing', so if you are going to make use of one of these exceptions you **also** need to consider whether your use is fair – the exception doesn't count if your actions are not fair!
- Some exceptions are only valid with works that have been **made available to the public**. For the purposes of exceptions to copyright, being available for consultation in a library reading room does **not** constitute 'making available to the public'. Publication **does** constitute 'making available to the public'
- This guide is not intended to be, nor act as a replacement for, legal advice or official guidance
- If you are in doubt about your use it is always best to check first, by visiting www.gov.uk/exceptions-to-copyright, speaking with a member of staff, consulting the Act at www.gov.uk/government/publications/copyright-acts-and-related-laws or contacting copyright@nls.uk.

Exception	Type of work	Short explanation	Applies to published works?	Applies to unpublished works?	Fair dealing exception?	Section of the Act
Research and private study	Any type of work	Fair dealing with a work for the purposes of non-commercial research or private study does not infringe copyright, as long as acknowledgment is provided.	Yes	Yes	Yes	29
Text and data analysis for non-commercial research	Any type of work	A work may be copied so that a person who has lawful access to it may carry out computational analysis for the purposes of non-commercial research. Acknowledgement must be provided, unless this would be impossible.	Yes	Yes	No	29A
Criticism, review and quotation	Any work that has been made available to the public (i.e. published)	Fair dealing with a work for the purposes of criticism, review or quotation does not infringe copyright, provided the work has been made available to the public . Acknowledgement must be provided, unless this would be impossible.	Yes	No	Yes	30
Reporting current events	Any type of work except for a photograph	Fair dealing with a work, other than a photograph, for the purposes of reporting current events does not infringe copyright, as long as acknowledgment is provided.	Yes	Yes	Yes	30
Caricature, parody or pastiche	Any type of work	Fair dealing with a work for the purposes of caricature, parody or pastiche does not infringe copyright.	Yes	Yes	Yes	30A
Disability copies for personal use	Any type of work	Copyright is not infringed by the making of an accessible copy of a work for a disabled person, where that person has lawful access to the work and their disability prevents them from enjoying the work to the same degree as a non-disabled person. If an accessible copy is commercially available on reasonable terms this exception may not be relied on. The copy may be made by the disabled person or by another person on behalf of the disabled person.	Yes	Yes	No	31A
Illustration for instruction	Any type of work	Fair dealing with a work for the purpose of illustration for instruction for a non-commercial purpose does not infringe copyright. Fair dealing must be by a person giving or receiving, or preparing to give or receive, instruction (including setting exam questions). Acknowledgement must be provided, unless this would be impossible.	Yes	Yes	Yes	32
Parliamentary and judicial proceedings, Royal Commissions and statutory inquiries	Any type of work	Copyright is not infringed by anything done for the purposes of parliamentary or judicial proceedings, Royal Commissions or statutory inquiries, or for the purpose of reporting such proceedings.	Yes	Yes	No	45-46

Exceptions to copyright were amended in 2014. This guidance seeks to reflect the law as amended. Guidance on the changes is available from the Intellectual Property Office at www.gov.uk/government/publications/changes-to-copyright-law.

Published 21 July 2015. Updated 19 August and 20 October 2016.