



Intellectual
Property
Office

Exceptions to copyright:

Guidance for creators and
copyright owners



March 2014

Copyright protects literary, dramatic, musical and artistic works as well as films, sound recordings, book layouts, and broadcasts. If you want to copy or use a copyright work then you usually have to get permission from the copyright owner, but there are a few exceptions where you can copy or use part or all of a copyright work without permission. Where a work contains a performance, the performer will also have rights over how the work is used. The exceptions to copyright also apply to these related rights.

The law on these exceptions is changing in a number of small but important ways, to make our copyright system better suited to the digital age. These changes will affect how you can use content like books, music, films and photographs.

The majority of uses of copyright materials will continue to require permission from copyright owners, so you should be careful when considering whether you can rely on an exception, and if in doubt you should seek legal advice. Copyright infringement is against the law. Deliberate infringement on a commercial scale may lead to a criminal prosecution, so you should take care when using copyright materials. Further guidance on copyright is available on the Intellectual Property Office website.

The exceptions to copyright for **'research and private study', 'text and data-mining', 'education and teaching', 'archiving and preservation', 'public administration'** and to permit **'accessible formats for disabled people'** will come into force on the 1st June 2014.

Parliament has not yet approved exceptions to copyright for **'personal copies for private use', 'caricature, parody and pastiche'** and **'quotation'**. The government intends to bring these exceptions into force as soon as possible.



Who should read this guidance?

This leaflet is aimed at creators, copyright owners, and businesses that manage rights in copyright works.

These changes will affect anyone who creates, owns, licenses or uses copyright works, including people who create parody works and people who quote or reference other people's works in their own.

This guidance will be relevant to a wide range of people, including writers, artists, musicians, amateur creators and bloggers, comedians, performers, academics, teachers, journalists, and media organisations such as broadcasters and production companies.

Guidance for those who own copyright content

The existence of a copyright exception does not change who owns the copyright in a work.

If someone wants to use a work and you are the copyright owner, in most circumstances you will be able to prohibit or license such use. However, you should check that the use doesn't fall within one of the exceptions to copyright. If it does, the user may be within their rights to use your work without your authorisation or a licence.

Businesses that generate or provide copyright content and businesses that use copyright content may wish to familiarise themselves with the guidance in the accompanying leaflets that explain, in more detail, the changes to how people can use copyright works. For links to the other leaflets please see the further information box.



FAQs

What does the copyright exception for disability mean for owners of copyright content?

If you own material that someone else wants to reproduce in an accessible format, to enable a disabled person to enjoy it, they will be able to do so without your permission, but only if copies in the accessible format are not commercially available on reasonable terms. The law permits not for profit bodies and educational establishments to make accessible copies, as well as individuals. If a not for profit body or educational establishment makes accessible copies of your work for distribution to disabled people, they are required to notify you or a body representing you (such as a copyright collecting society). For more information see the leaflet “Accessible formats for disabled people”.

What does the text and data mining exception mean for content providers?

It means that if researchers have the right to access a copyright work to read it (for example, through paying for a subscription to a journal or through material published under a Creative Commons licence), they will be allowed to make a copy of the work for text and data mining purposes, without asking for additional permission. The exception applies to all types of copyright works but only when research is for non-commercial purposes. Publishers can apply controls on access or other measures that are required in order to maintain security or stability but these should not stop researchers from benefiting from the exception. The leaflet “Exceptions to copyright: Research” contains more information.

What does the copyright exception for education mean for those who provide educational content?

It means that illustrative uses of copyright works will be permitted for the purpose of teaching, provided that such use is minimal and fair, and the source of the work is acknowledged. More significant uses by schools, colleges and universities - such as recording broadcasts or photocopying textbooks to share with students - will be permitted under certain conditions, but, as is currently the case, educational establishments will only be able to rely on the exception if licences authorising the acts are not available. Where licences are available, the educational establishment will need to hold a relevant licence. Educational licensing schemes are operated by collecting societies including the Educational Recording Agency and the Copyright Licensing Agency, and if you are a member of one of these societies you will continue to be able to claim remuneration for educational copying.

For more information, including details of the other conditions attached to these exceptions, see the leaflet “Exceptions to copyright: Education and Teaching”.

What does the copyright exception for private copies for personal use mean for copyright owners?

It means that consumers will be able to copy content, such as CDs, books or films, they have purchased from one device onto another without infringing copyright. For example, it would permit someone to copy a CD they have bought onto their MP3 player.

However, it will still be against the law for consumers to make copies for friends or family, or to make a copy of something they do not own or have

acquired illegally, without the copyright owner's permission. You will also remain able to control the copying of your works using copy protection technology.

What should I do if someone is using my copyright work without permission and I believe that a copyright exception does not apply?

Where all or a substantial part of your work has been used without your permission and none of the exceptions to copyright apply, your copyright may have been infringed. Although you do not have to, it will usually be sensible to try to resolve the matter with the person/organisation you think has infringed your copyright before starting legal proceedings. More information can be found at <http://www.ipo.gov.uk/types/copy/c-manage/c-useenforce/c-enforce.htm>

Where can I find more information about licensing my copyright work to others?

More information can be found on the IPO's website at:
<http://www.ipo.gov.uk/types/copy/c-other/c-licence.htm>

Information on the exceptions for **Quotation** and on **Caricature, Parody, or Pastiche** is set out in the second part of this guide



Guidance for those using copyright works to create new content

Caricature, Parody or Pastiche

What's changing?

Many works of caricature, parody or pastiche – songs, films, artworks and so on – especially in this age of digital creation and re-mixing, involve some level of copying from another work.

The law is changing to allow people to use limited amounts of another's material without the owner's permission. For example: a comedian may use a few lines from a film or song for a parody sketch; a cartoonist may reference a well known artwork or illustration for a caricature; an artist may use small fragments from a range of films to compose a larger pastiche artwork.

It is important to understand, however, that this change in the law only permits use for the purposes of caricature, parody, or pastiche to the extent that it is “fair dealing.” Fair dealing allows you only to make use of a limited, moderate amount of someone else's work. This legal term is further explained later in this guide.

FAQs

Does this mean that I no longer need to pay for a licence if I wish to use a work for caricature, parody or pastiche?

Fair dealing allows you only to make use of a limited, moderate amount of someone else's work. Anything that is not fair dealing will require a licence or permission from the copyright owner. (Information on obtaining a licence from a copyright owner or through a collecting society can be found at: <http://www.ipo.gov.uk/types/copy/c-other/c-licence.htm>.)

Can I copy an entire work?

The new exception allows a reference to a copyright work - in essence building on it. This means it is very unlikely that someone could copy a whole unchanged work, without permission from the copyright owner. For example, it would not be considered “fair” to use an entire musical track on a spoof video.

What is meant by “for the purpose of caricature, parody or pastiche”?

The words “caricature, parody or pastiche” have their ordinary dictionary meanings. In broad terms, parody imitates a work for humorous or satirical effect, commenting on the original work, its subject, author, style, or some other target. Pastiche is a musical or other composition made up of selections from various sources or one that imitates the style of another artist or period. A caricature portrays its subject in a simplified or exaggerated way, which may be insulting or complimentary and may serve a political purpose or be solely for entertainment.

What if someone uses my work for something derogatory or distasteful?

The changes to copyright law have no impact on the law of libel or slander, so you would be able to sue if a work were defamatory. In addition, copyright law expressly protects an author’s moral right to object to “derogatory treatment” of a work. Copyright law defines what amounts to “derogatory treatment” and this remains unaffected by these changes.



Quotation

What's changing?

Copyright law is changing to give people greater freedom to quote the works of others. You will not need to seek the permission of the copyright owner as long as the quotation is accompanied by a sufficient acknowledgment of the source, and as long as the use is considered reasonable and fair ("fair dealing").

This is a small extension to the existing law that already allows fair dealing with copyright materials for the purpose of criticism, review and news reporting.

Will this mean people can "quote" any amount of copyright material without permission?

No. The change will only allow use of material where it is genuinely for the purpose of quotation, and only where the use is fair and reasonable (e.g. it does not replace a commercial sale). So, for example, it could permit a short quotation that is necessary and relevant in an academic paper or a history book, but it would not permit a long extract.

Effect on existing licences

Where a licence granted under the old law gives wider permissions than the new law, the licence will be unaffected. However, where the new law permits more than the licence, the licence holder will be able to rely on the new law. The licence will still be valid, but a licensee cannot be made to comply with any term in so far as it seeks to restrict something that the new law allows. E.g if an individual purchases a work on terms which prevent the copying of the work for any purpose, it will not be a breach of the licence if the purchaser makes a personal copy.

What is fair dealing?

‘Fair dealing’ is a legal term used to establish whether a use of copyright material is lawful or whether it infringes copyright. There is no statutory definition of fair dealing - it will always be a matter of fact, degree and impression in each case. The question to be asked is: how would a fair-minded and honest person have dealt with the work?

Factors that have been identified by the courts as relevant in determining whether a particular dealing with a work is fair, include:

- 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.
- 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.

The relative importance of any one factor will vary according to the case in hand and the type of dealing in question.



Further Information

Guidance on changes to the copyright exceptions is available at <http://www.ipso.gov.uk/copyright-exceptions.htm>
Guides include:

- Overview
- Guidance for consumers
- Education and Teaching
- Research
- Copyright material held by public bodies
- Libraries, archives and museums
- Accessible formats for disabled people

Find out why the Government is changing the copyright exceptions here:

Modernising Copyright, a modern, robust and flexible framework: <http://www.ipso.gov.uk/response-2011-copyright-final.pdf>

IP information: Learn more about Intellectual Property by visiting the IPO web pages: www.ipso.gov.uk

Licensing: More information can be found at: <http://www.ipso.gov.uk/types/copy/c-other/c-licence.htm>

IP Healthcheck: The IPO's free IP Healthcheck can help you to find out more about the different IP rights and how they affect you and your business: www.ipso.gov.uk/iphealthcheck

Note: This guidance sets out the general principles of the changes to copyright law, it is not legal advice. It is recommended that you obtain legal advice in circumstances where you have specific questions relating to the law.



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DPS/B900/03-14



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