



THE UNIVERSITY OF
NEWCASTLE
AUSTRALIA

FAIR DEALING & FAIR USE

COPYRIGHT - WHAT YOU NEED TO KNOW

This factsheet is intended for University of Newcastle staff members to use in the context of their employment only and provides general advice. University staff should contact the Copyright Advisor if they have specific questions or concerns.

What is 'fair dealing'?

Fair dealing is a collection of defined exceptions in the *Copyright Act 1968* (the Act) that allow for certain uses of literary, dramatic, musical, artistic, and audio-visual material without infringing copyright. The defined exceptions cover 'criticism or review', 'parody or satire', 'reporting news', 'research or study', and 'judicial proceedings or professional advice'. While there are other exceptions in the Act, these in particular mention fair dealing.

What is 'fair use'?

Fair use does not apply in Australia. It is a principle from U.S. legislation that is generally broader in its application than fair dealing is in Australia. U.S. legislation establishes four factors to guide what constitutes a fair use – (1) the purpose and character of the use; (2) the nature of the copyright work; (3) the amount being used; and (4) the effect on the potential market or value. Due to a more open interpretation, courts are often required to arbitrate reuse disputes.

What is 'fair' under fair dealing?

The 'research or study' exception in the Act states a "reasonable portion" is considered fair dealing. For literary, dramatic or musical works, this is usually 10% of the work (or 1 chapter/article). While not stated for audio-visual works or the other fair dealing exceptions, a "reasonable portion" would also be best practice. There may also be other considerations, such as providing "sufficient acknowledgement of the work", or commercial determinants.

Does fair dealing apply to educational use in my course?

Fair dealing is not applicable to the use of material in courses by coordinators/lecturers. Rather, the Act includes an educational statutory licence (s113P) which allows for the sharing of certain third-party materials in your course without infringing copyright. There are some restrictions about how these materials can be (re)used – please see the individual information sheets covering images, music, video, etc., for more detailed information. The educational statutory licence does not apply to open courses such as MOOCs, only to reuse in 'standard' (closed) university courses.

Does fair dealing apply to student reuse of material in assessments, etc.?

Fair dealing generally applies to the use and reuse of copyright material by students in course-related activities. Students should be encouraged to appropriately reference all third-party material reproduced in their assessments, including images, video, etc. Some referencing styles may request the inclusion of a copyright or licensing statement where students directly reproduce material in their assessments (e.g. [APA for figures](#)) – it is up to you as coordinator whether this is reinforced.

Does fair dealing apply to reuse in my research and publications?

While fair dealing is applicable to general usage of copyright material when conducting your research, reproduction of any copyright material in a publication (or thesis) is outside of the fair dealing exceptions and will require clearance/permission from the copyright owner/s. There are various ways to seek this permission, including via online forms in publisher databases, direct contact, etc. The Copyright Advisor can assist with this process.

Does fair dealing cover processes such as data mining?

There is no specific exception in the Act allowing for data mining, data scraping or similar processes. 'Research or study' may allow for certain usage of copyright material when conducting your research, but this would depend on the process engaged and how (and how much) material is accessed and reproduced. Owners of databases and datasets may have a request process in place for (or a licence option to cover) data mining – best practice is to investigate these avenues where available.

Fair dealing will not cover reproduction of copyright material in a publication (or similar) resulting from any data mining or similar process that occurs within your research. Where you are directly reproducing or adapting copyright material you should always seek clearance/permission from the copyright owners.

What if I have more questions?

Contact the Copyright Advisor to seek support or advice – see **Copyright Support** below.

Copyright Support

Ask a question: newcastle.edu.au/copyright-request

Phone: (02) 492 16456

Web: newcastle.edu.au/copyright-support

Academic Division | Library Services

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**GETTING
COPYRIGHT
'RIGHT'**