

## INFORMATION SHEET

### Fair dealing

January 2009

---

The Copyright Council of New Zealand does not provide legal advice. The purpose of this information sheet is to give introductory information only. If you need to know how the law applies in a particular situation, please seek legal advice.

### Introduction

The Copyright Act 1994 gives copyright owners a number of exclusive property rights in relation to certain works (such as books, journal articles, scripts, music, paintings, photographs or films).

In most cases, you will need to get permission whenever you want to use copyright material in a way that is reserved to the copyright owner. For example, if you wish to:

- copy a work (including photocopying, digital scanning, printing a digital file, copying music, CDs, films, DVDs, printing a digital file or downloading material from the internet);
- perform, play or show a work in public (such as reading a poem, performing a play, playing music or showing a film);
- translate text from one language to another;
- make a dramatic work (such as a play, dance, mime, film scenario or script) of a literary work (such as a novel or short story) and vice versa; or
- make an arrangement or transcription of a musical work.

### When can you use copyright material without permission?

#### ***Permission not needed if using less than a “substantial part”***

You don't need to get permission to use an *insubstantial* part of a work. Infringement only occurs when a whole work or a “substantial” part of a work is copied or used in a way that is reserved to the copyright owner.

However, even a very small part of a copyright work may be substantial for the purposes of copyright infringement. For instance, it may be sufficient for infringement that only a small but important or distinctive part of a poem, story or musical composition is copied.

#### ***Transient reproduction of a work***

Permission is not needed for transient or incidental reproductions which are an integral and essential part of a technological communications process that don't infringe copyright or that enable lawful use of the work. The transient reproduction must have no independent economic significance.



## **Activities specifically permitted under the Copyright Act**

The Copyright Act specifies certain circumstances where you can use all or a substantial part of a copyright work without the copyright owner's permission. These exceptions from infringement include:

- the “fair dealing” exceptions outlined in this information sheet;
- exceptions for educational uses. For further information see our information sheet *Copyright & education*;
- exceptions for public administration. For further information see our information sheet *Copyright & public administration*; and
- special provisions relating to specific works, uses or purposes, including as listed below under “Other specific exceptions”.

### **“Fair dealing” exceptions to infringement**

A “fair dealing” with copyright material does not infringe copyright if it is for the following purposes:

- research or private study;
- criticism or review; or
- reporting current events.

What is “fair” will depend on the facts of a particular case. Factors to take into account when considering if a dealing is fair, include those listed below under “Research or private study”.

Only the person doing the copying can rely on a fair dealing defence. It is not fair dealing to copy for someone else's purpose. For example, copying for another person's research is not fair, unless that person initiates a specific request for you to make that copy on their behalf, for such a purpose.

### **Research or private study**

Copying of copyright material does not infringe copyright if it is for the purpose of either research or private study – and it is fair. No more than one copy may be made on any one occasion.

The terms “research” and “private study” are given an ordinary meaning. In one case, “research” has been described as “*a diligent and systematic inquiry or investigation into a subject in order to discover facts or principles*”. In New Zealand, research need not be for private purposes and may be commercially motivated. Private study is generally personal to the person studying.

The Copyright Act lists several factors that must be taken into account in determining whether copying for research or private study is fair. These factors are:

- the **purpose of the copying** (for example, copying for commercial purposes is less fair than copying in connection with a course of study);
- the **nature of the work copied** (for example, it may be less fair to copy from a work resulting from a high degree of skill than a mundane work);



- whether the work **could have been obtained within a reasonable time** at an **ordinary commercial price** (it may be fair to copy all or part of a work that is not available commercially, but unfair to copy where you can buy it);
- the **effect of the copying** on the **potential market for or value of the work** (for example, where a person copies a work that is available for sale or licence); and
- the **amount and substantiality of the part copied** (for example, it is less fair to copy a large or important part of a work than to copy a small or unimportant part).

It is likely that a court would also refer to the above factors for dealings with copyright material which are not copying.

### **Criticism, review or news reporting**

A fair dealing with a work for the purpose of criticism or review does not infringe copyright, as long as there is “sufficient acknowledgement”. This generally means that the author (not the copyright owner) and the title of the work, are acknowledged.

A fair dealing with a work (other than a photograph), for the purpose of reporting current events, requires “sufficient acknowledgement” unless the reporting is by means of a sound recording, film, broadcast or cable programme.

### **Other specific exceptions**

The Copyright Act lists a number of specific exceptions from copyright infringement relating to specific works, uses or purposes.

One exception is where a person incidentally copies a work included in an artistic work, sound recording, film, broadcast or cable programme. For example, if a scene from a film shows a painting on a wall in the background, it is likely to be incidental copying. However, incidental copying of a *musical* work, or words spoken or sung with music, may infringe copyright if the music is deliberately copied. For example, permission will be needed to include music on a film soundtrack, even if it is not an essential feature of the scene. Permission may not be required if part of a song on the radio is accidentally captured in a live broadcast.

### **Fair dealing myths**

Fair dealing is not a “personal use” exception to copyright infringement.

Fair dealing does not allow copying of 10% of work regardless of anything else.

### **“Blanket” licences**

In some circumstances, “blanket” licences to use copyright material are available from a collecting society. In return for the payment of an annual licence fee, the licence allows use of copyright material in specified ways without having to get permission from copyright owners for each use.

### **Further information**

For further information about copyright, see our website [http: www.copyright.org.nz](http://www.copyright.org.nz).