

## What is Copyright?

The law of copyright exists to protect people's creative endeavours so that they can properly benefit from their work. If such protection didn't exist and people were able to copy or sell or profit from another's work, there would be little incentive for people to create in the first place.

Copyright is the name for a collection of exclusive rights to do certain acts in respect of certain types of creative works. Virtually all creative works are protected, including: literary works (e.g. novels, newspaper articles, factual books, letters, computer programmes); all kinds of musical works; dramatic works (e.g. stage plays, dance); artistic works (e.g. paintings, photographs, sculpture); sound recordings (e.g. CDs, tapes); all types of films; broadcasts (there is separate copyright in a broadcast, in addition to any copyright in the creative content); cable programmes; and, published editions (the layout of a book or magazine). Copyright extends to almost any work, the creation of which took some endeavour. Copyright protects the form of the creative work, not the idea itself.

The copyright owner has the exclusive right to do and authorise others to do the following:

- copy the work, issue copies of the work to the public;
- perform, show or play the work in public;
- broadcast it or include it in a cable programme service;
- rent or lend copies of it; and
- make an adaptation of it or do any of the above in relation to an adaptation;

## What is Fair Dealing?

- Fair dealing is a statutory defence to an action for infringement of copyright. As a legal term, fair dealing describes a number of circumstances in which copyright works or extracts from them can be used without permission from, or payment to, the copyright owner.
- If a copyright work is legitimately used under the fair dealing provisions, it is unnecessary to clear any underlying rights in the work, e.g. if fair dealing a clip from the film Titanic, it would not be necessary to clear the soundtrack contained in the clip used.
- The most common type of fair dealing when making television programmes involves the use of 'clips', e.g. clips of television programmes, online videos, films, advertisements and music videos. Although 'clips' are referred to throughout these guidelines, all copyright works, e.g. literary, dramatic, musical, photographic etc., can be fair dealt. However, note that photographs cannot be fair dealt for the purposes of reporting a current event.
- Fair dealing should not simply be used by programme-makers as a means of saving money on the clips budget. A fair dealing defence is likely to be undermined if your sole motive is to save money and you may be found liable for copyright infringement.
- Fair dealing is only a defence to copyright infringement in the UK. It will probably not be suitable for programmes that are to be sold or broadcast overseas, for example, if your programme is a co-production with a foreign broadcaster or is to be made available via the internet. Specific advice in the jurisdiction(s) to which sale is planned is required where a programme containing fair dealing is to be broadcast outside the UK.
- Any material that has been fair dealt in the programme cannot be included in any programme trails, online social clips, or publicity material except in exceptional circumstances.

## How does it Work?

[Section 30 of the Copyright, Designs and Patents Act 1988](#) (as amended by the [Copyright and Related Rights Regulations 2003](#) and the [Copyright and Rights in Performances \(Quotation and Parody\) Regulations 2014](#) sets out the conditions that must be met to legitimately fair deal a copyright work.

There are three types of fair dealing set out in section 30:-

- 1. for the purpose of reporting current events;**
- 2. for the purpose of criticism or review; and**
- 3. the use of a quotation from a copyright work.**

Section 30A provides a further fair dealing defence: -

- 4. for the purposes of caricature, parody or pastiche.**

### **1. Fair dealing for the purpose of reporting current events**

- Photographs are excluded under this limb. In other words, you cannot fair deal with a photograph in order to report a current event.
- Most sports material is also excluded. Most sports material is regulated under an agreement between the main broadcasters, called the Sports News Access Code of Practice, which allows certain clips to be used in regularly scheduled news programmes only.
- The most common way of fair dealing under this limb is using clips to report directly a current event. For example, a news report about the Oscars Ceremony might show a clip, taken from a US broadcaster's coverage of the awards, in order to report who won 'Best Actor'. Another example would be a broadcaster taking and using clips of another broadcaster's footage of some natural disaster, or other major incident, in order to report the fact that the disaster or incident had taken place e.g. an earthquake, hurricane, terrorist incident.
- What constitutes a current event will depend on both the currency of the event and whether the event is genuinely newsworthy.
- Any clip being used and fair dealt needs to have some direct relevance to the current event being reported and not just a tenuous connection. In addition, the 'current event' must be current. For example, the Oscars Ceremony may only have currency for up to 24 hours after the announcement of the winners. In other words, the Oscars may only remain a 'current event' for up to 24 hours after the ceremony and, accordingly, a broadcaster would not be justified in using clips of another broadcaster's footage of the ceremony

weeks later under this limb of fair dealing. However, one may well be able to fair deal for longer clips concerning other types of events. For example, one might be able to fair deal footage of the devastation caused by a major natural disaster under this limb of fair dealing for some time, as part of ongoing news coverage into the continuing plight of victims. In other words, in this sort of scenario, the 'event' would remain 'current' for some time because of ongoing developments.

- It may also be acceptable to use older clips under this limb of fair dealing when reporting a current event, as long as the clip that is being used has sufficient relevancy to the current event. For example, in order to report the death of a famous actor, a broadcaster may be entitled to use: a clip of the actor receiving a Lifetime Achievement award (even where that took place years earlier and the footage is a number of years old); a clip of the actor talking about dying or about his impending death (again, footage which might be old); or possibly a clip from a film that the actor was particularly associated with (again, which may be a very old film).

**Example:** The event that was the wedding of HRH the Prince of Wales to Camilla Parker-Bowles could be reported contemporaneously under fair dealing by the use of any of the following clips:

1. Footage of the wedding itself, i.e. current footage of the current event (but also the following:);
2. Prince Charles and Camilla inspecting the Guildhall in the run-up to the wedding;
3. Clarence House's official announcement of the engagement of the couple;
4. Guests arriving at Windsor Castle for the wedding reception; or
5. Lord Falconer's comments on the legality of the wedding.

These clips are likely to have sufficiently direct relevance to the current event being reported.

However, it is unlikely to be fair dealing for the purpose of reporting the above current event to show clips of:

1. The wedding of Prince Charles to Lady Diana Spencer; or
2. Prince Charles' gaffe (regarding his dislike of a BBC reporter) in front of reporters whilst on his annual skiing trip with Princes William and Harry; or
3. Martin Bashir's interview with Princess Diana in which she said that there were 'three people in my marriage'.

These clips are unlikely to have sufficient relevance to the current event being reported.

## 2. Fair dealing for the purpose of criticism or review

- The law states that: "Fair dealing with a work for the purposes of criticism or review, of that or another work, does not infringe any copyright in the work provided that it is accompanied by a sufficient acknowledgement (unless this would be impossible for reasons of practicality or otherwise) and provided that the work has been made available to the public."
- Fair dealing under this limb is often used in situations where permission to use copyright material would be or has been refused, or where unreasonable restrictions have been placed on its use. It is, therefore, commonly used where the subject of a programme is unlikely to like the way in which they are portrayed, for example, a biographical programme of an actor which is critical of him/her and with which he/she has not co-operated.
- It is an essential prerequisite of fair dealing for the purpose of criticism or review that the copyright work has been previously published (for example, by means of an authorised performance, exhibition, playing or showing of the work in public). If the copyright work is unpublished, it cannot be fair dealt under the criticism or review limb.
- The clip being used should be directly relevant to the review or critique being undertaken and not just have a tenuous connection.
- Clips cannot be used simply as "wallpaper". Additionally, it is unlikely that fair dealing under this limb will support clips being used in a 'sting', title sequence, a start or end of part reprise, tease, or a fast-cut montage or as a backdrop.
- In the event of a dispute, in deciding whether clips have been used for the purpose of criticism or review, any Court would consider the programme's likely impact on its audience and what a reasonable viewer would understand to be the purpose of including the material.
- Fair dealing for the purpose of criticism or review has to be the genuine purpose of the use. Dressing up the infringement of another's copyright in the guise of criticism or review is not fair dealing and your defence will fail. Clips can be used in a variety of ways, including:
  1. In the context of reviewing/criticising the clip itself – e.g. use of clips of a music video to illustrate how well/badly the artist performed in it; or how it was directed.
  2. In the context of some other review or criticism, such as of a theme or philosophy behind a work: e.g. use of clips from the film A Clockwork Orange in the context of criticising the treatment of violence in the film and whether it



was a justifiable reason for the decision of director Stanley Kubrick not to release it in the UK ('the Clockwork Orange case').\*

3. For example, to show an advertisement, or a clip from it, criticising the exploitation of children by a burger chain, by reference to the way the advertising deliberately appeals to children.
  - The criticism or review may be in the form of an interviewee's sync, voice over/commentary or text on screen, provided the review or critique is pertinent and the clip in question is not unduly lengthy (see How much of the copyright work am I allowed to use? below). The criticism or review can run before, after or concurrently with the clip being used, or all three.
  - While clips may be edited to accompany the critique or review, clips should not be altered or manipulated under this limb of fair dealing, e.g. by adding in comic or special effects (although see '4. Caricature, parody or pastiche' below). The use of slow motion may be acceptable under this limb of fair dealing, where it is essential to the point being made.
  - Where you plan to rely on an interviewee talking about the clip, it is always helpful to ensure that you show him/her the clips beforehand, in order to ensure that their comments are specific and relevant to the clips used, and accordingly that you have the necessary material in the edit in order to review/critique the clips that want to.
  - As regards the requirement of giving a 'sufficient acknowledgement' – see What is a sufficient acknowledgement? below.

### 3. Fair dealing with Quotations

- Recent changes in 2014 to the law of fair dealing provide that "Copyright in a work is not infringed by the use of a quotation from the work (whether for criticism or review or otherwise)" provided that: -
  1. the work has been made available to the public;
  2. the use of the quotation is fair dealing with the work;
  3. the extent of the quotation is no more than is required by the specific purpose for which it is used; and
  4. the quotation is accompanied by a sufficient acknowledgement (unless this would be impossible for reasons of practicality or otherwise).
- The IPO (Intellectual Property Office) has provided some limited guidance: see '[Exceptions to Copyright: Guidance for creators and copyright owners](#)', Intellectual Property Office (IPO).
- IPO's guidance states that the new law "... only allows 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)". It also gives an example of what will be acceptable: "... 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".

The guidance does not provide a definition of "for the purpose of quotation" and the example given is not as helpful as it might be, given that it is such an obvious one. If the example given didn't fall within the exception, it is hard to see what would. However, considering the wording of the Act itself, it is suggested that the courts may interpret the section in the following ways:

1. It seems clear that programme-makers will be able to fair deal with quotations from all types of copyright works. A quotation from a television programme would be 'a clip' from that programme. Note, however, that in relation to 'photographs', whilst these are not excluded (i.e. one can quote from a photograph under fair dealing rules), this is only likely to be acceptable in exceptional circumstances (see point 5 below).
2. When quoting from copyright works and relying on this section, it is unlikely that we will be justified in using large amounts of the original work. In other words, in most cases, when fair dealing with quotations, we should always be cautious as to the amount of the work we are taking/quoting. The Act provides no definition of 'quotation' but IPO guidance suggests, as do most dictionary definitions of the word, that quotations tend to be short snippets, extracts or passages taken from existing works, as opposed to something more substantial.
3. There are clearly no set limits in terms of how big or small, or long or short, a quotation can be relative to the work from which it is taken, so this will have to be considered on a case-by-case basis. However, we expect programme-makers to err on the side of caution, particularly until the parameters of this section are more clearly understood, following judicial consideration. What is clear is that any quotation that is used should be directly relevant to the purpose for which the quotation is being used, and particular attention should be paid to any proposed fair dealing with a quotation, where anything other than a 'short extract' of the original work is intended to be taken.
4. Whilst the idea of a quotation being a 'short extract' fits easily with the word's everyday meaning, when thinking about books, songs, television programmes and films (short clips), what it means practically in terms of a piece of art or photograph is less clear, particularly where the work consists of a single image. Quoting from a painting or sculpture, or photograph is likely to involve showing the entire work, albeit briefly.
5. IPO guidance on this section states that whilst the quotations exception does apply to all types of copyright work, '... it would only be in exceptional

circumstances that copying a photograph would be allowed under this section. It would not be considered fair dealing if the proposed use of a copyright work would conflict with the copyright owner's normal exploitation of their work. For example, the ability to sell or license copies of photographs for inclusion in newspapers would be normal exploitation.' See '[Exceptions to Copyright: Guidance for creators and copyright owners](#)', Intellectual Property Office (IPO).

6. Since the introduction of the 1988 Act, photographers have always enjoyed a level of protection with respect to the fruits of their work, which other copyright owners have not. For example, photographs are specifically excluded from the fair dealing provisions relating to reporting current events; the only type of copyright work which is so excluded. It may well be that the IPO's note of caution here (about fair dealing with quotations of photographs) is intended to relate principally to current or recent photographs for which there is, or remains, a significant commercial demand e.g. the types of photograph that appear regularly in newspapers, magazines and online. Otherwise, it is difficult to see any real justification for making a distinction between reproducing a photograph under this section and reproducing a piece of art, e.g. a painting or sculpture, as in all cases it is likely that the whole of the work, or at least a very significant part of it, will be reproduced.
7. Nevertheless, particularly given the IPO's warning, we should proceed particularly cautiously when considering relying on the fair dealing with quotations exception to reproduce photographs. If a photograph is to be fair dealt it may well be advisable that review or critique of that work is included within the programme, so that the defence of "fair dealing for the purposes of review or critique" can also be relied upon in the event of any complaint.
8. As regards other copyright works where fair dealing with a quotation is likely to involve using/showing the whole of the work e.g. paintings/sculptures, it is suggested that again we proceed with caution. A particularly important consideration in such circumstances is likely to be whether and to what extent the use competes with the original work and whether the use might be capable of reducing the value (to the copyright owner) of the work being quoted.
9. As well as thinking about what is taken from the original work when quoting, and the size of any quotation, consideration must also be given as to 'the purpose' for which the quotation is taken. The Act itself states that "the extent of the quotation" should be "no more than is required by the specific purpose for which it is used"; and many dictionary definitions of the word 'quotation' make direct reference to 'purpose'; for example, a definition provided by Collins' English Dictionary is: "...a phrase or passage from a book, poem, play, etc, remembered and spoken, esp to illustrate succinctly or



support a point or an argument". (Collins English Dictionary, HarperCollins Publishers Ltd).

10. Accordingly, when fair dealing with quotations, careful consideration should be given to the purpose, i.e. the editorial reason, for which the quotation is being used. In essence, a quotation is a reference to some pre-existing work. It is suggested that if there is a clear editorial purpose for reference to that work, particularly where that is clear to viewers, then it is likely to fall more squarely within this fair dealing provision.
11. For example, a comedian might quote from a newspaper, book (or other work) to set up part of his/her stand-up routine (here there is clear editorial purpose); the presenter of a history programme about WWII might quote from one or more of Churchill's speeches in the context of describing the dangers that Britain faced at the time from the Nazis, or in the context of discussing Churchill's great oratory skills in galvanizing a nation during difficult times. An entertainment show might quote (i.e. show a short clip) from another television programme to illustrate some particular point e.g. that it was the highest rating show of the week, or perhaps simply that a new series was starting, or a series ending. The point is that this section is unlikely to allow for the use of copyright material where the work from which the quotation is taken is not properly referenced and / or there is no clear editorial purpose for its inclusion. Accordingly, when fair dealing with any quotations within programmes, they should be adequately contextualised and be justified editorially.
12. At times, there is likely to be overlap between fair dealing by the use of a quotation, and fair dealing for the purpose of review or critique, and indeed this is expressly recognised by the wording of the Act. In other words, use of clips and other material may well be defensible under both these limbs of fair dealing. Where 'fair dealing with a quotation' is likely to be particularly useful is where programme-makers wish to make reference to another work, but there is no or limited scope within the programme to review or critique that work. For example, an entertainment show interviewing a guest actor may wish to show a number of short clips from a number of films, to illustrate that the actor in question had appeared in those films and always played an action hero. Relying on 'fair dealing for the purposes of review or critique' would be risky where there was no review or critique of those clips/films, but showing such clips may well be defensible under the quotations provision, as long as it was clear to viewers why the clips were being shown i.e. to show that the actor had played an action hero in all these films.

In summary, when fair dealing with quotations:

1. Consider carefully the purpose of using the quotation. There should be a clear editorial purpose. Quotations should be contextualised. Viewers should be clear where the quotation is from, and why it is used. In practice this is likely to mean making an explicit reference to the work from which the quotation is taken;
2. Consider carefully what it is you are quoting. Does it have direct relevance to the purpose for which it's being used? Consider how much of the work you are reproducing, when compared with the work as a whole. It should be no more than is required by the specific purpose for which it is being used. As noted, whilst there are no set limits on size, the everyday meaning of a 'quotation' doesn't sit easily with taking large amounts of other works – although as regards the proportion of what is taken, when quoting, it is recognised that this may well be affected by the medium from which you are quoting;
3. Ensure the work you are quoting from has been published before (legitimately); and
4. Ensure the quote is attributed, i.e. provide the sufficient acknowledgement of title and author (unless impossible for reasons of practicality or otherwise).

### What is a sufficient acknowledgement?

- A condition of fair dealing with a copyright work, whether for the purpose of reporting a current event or for the purpose of criticism or review, or when quoting from a work, is that the work is accompanied with a sufficient acknowledgement of the 'title and author' of the work. The required acknowledgement is usually 'supered' on the screen when the clip is shown but, in some exceptional cases, it may be sufficient to put the acknowledgement in the end credits of the programme. The acknowledgment may also be given verbally in appropriate cases.
- In exceptional circumstances no acknowledgement is required - "where it would be impossible for reasons of practicality or otherwise". Accordingly, in circumstances where, in spite of best endeavours, it has not been possible to trace what the title of a work is, or who its author is, we may decide to go ahead and fair deal with a work, be it for the purpose of reporting a current event, for the purpose of review or critique, or when fair dealing with a quotation, without giving an acknowledgement. However, in these circumstances programme-makers must always seek the advice of the programme lawyer.

- The acknowledgement needs to refer to the title of the work and its 'author', which will often, but not always, be the copyright holder. The following are examples which can be used for different types of copyright works:

#### LITERARY WORKS

The author e.g. 'Harry Potter and the Goblet of Fire'/J K Rowling

#### DRAMATIC WORKS

The writer e.g. 'A Few Good Men'/Aaron Sorkin

#### MUSIC

Music composer and lyricist if applicable e.g. 'Yesterday'/Lennon and McCartney

#### MUSIC VIDEO

The artist, lyricist, composer, record company, and director e.g. 'Angels'/Robbie Williams/R.Williams & G. Chambers/EMI Music

#### ART

The artist e.g. 'My Bed'/Tracey Emin

#### PHOTOGRAPHS

The photographer e.g. 'Princess Diana'/Mario Testino

#### FILM

The studio, producer and principal director e.g. 'A Clockwork Orange'/Warner Brothers Inc./Polaris Productions Inc./Stanley Kubrick

#### BROADCASTS

The Broadcaster and Production Company e.g. 'Big Brother 6'/Channel 4/Endemol Productions

#### ADVERTISEMENT

The advertising agency and the production company e.g. 'Mr Kipling-Delivery'/Saatchi & Saatchi/David Lodge

## ONLINE/UGC CLIP

The creator (often, but not necessarily, the uploader) and the original name of the clip e.g. Gnewstv/'Arson Backfires as Biker Sets Fire to Himself' or Stephennewton/'Manchester Bollards'

The Courts have held that the where a clip features an on screen broadcaster's logo this was sufficient to identify the broadcaster as the author of the work, in spite of the fact that the broadcaster was not named in an on screen aston.

The Courts have also held that oral statements that accompany the clip, e.g. an interviewee's sync, which acknowledges the author, would equally constitute a sufficient acknowledgement.

The acknowledgement must be large enough to be legible and on screen long enough for viewers to be able to identify the title and author of the work.

### **4. Fair dealing for the purposes of caricature, parody or pastiche**

The wording of the Act is as follows: "(1) Fair dealing with a work for the purposes of caricature, parody or pastiche does not infringe copyright in the work."

This exception came into force on 1 October 2014. The IPO has issued guidance and there is also a European Court judgment (Deckmyn v Vandersteen) which provides a helpful definition of what constitutes 'parody' and what does not.

The law now allows creators to use other people's copyright works without their consent for the purposes of "caricature, parody or pastiche". Note that when relying on this limb of fair dealing, there is no requirement to acknowledge the work with 'title' and 'author' (as there is with other types of fair dealing) or indeed give any other form of acknowledgement.

Prior to the introduction of this section, there was no specific defence for these activities and creators of caricatures, parodies and pastiches had to be careful that their creations either did not copy a substantial part of works they were caricaturing, parodying etc., or that they could avail themselves of some other defence to copyright infringement. This defence will greatly assist those in the creative industries and hopefully remove a significant degree of uncertainty in this area.

The Act itself does not provide definitions of the terms 'caricature', 'parody' or 'pastiche'. However, as the [IPO Guidance](#) makes clear, Parliament's intention was that these terms are to have their usual everyday meanings (whilst taking into account the context and purpose of the copyright exceptions).



The guidance provides the following definitions, stating that:

- "...in broad terms, parody imitates a work for humorous or satirical effect. It evokes an existing work whilst be noticeably different from it." (This definition is in line with ECJ's decision in Deckmyn v Vandersteen.)
- "... 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" and;
- "... 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."

The IPO Guidance provides some helpful assistance on how this section is likely to be interpreted, as follows:

1. The new exception is intended to allow creators to make reference to other copyright works within a work they are creating, in essence 'building on' the earlier work. The guidance states that "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."
2. This particular provision will only permit use of works for the purposes of caricature, parody, or pastiche to the extent that it is "fair dealing" and the guidelines state that "fair dealing allows you only to make use of a limited, moderate amount of someone else's work".
3. When fair dealing for the purposes of parody (or pastiche/caricature) you do not have to comment on the original work you are using or its author.
4. The new exception does not affect an author's right to object to a derogatory treatment of his/her work (See [s.80 CDPA 1988](#)) but also see Derogatory treatments below.

In addition, as already noted, a recent judgment of the ECJ provides guidance not just on what characteristics something must have to qualify in law as a parody, but also sets out some characteristics which are not essential. For example, a parody does not have to "display an original character of its own, other than that of displaying noticeable differences" to the original parodied work. In addition, it doesn't matter if the parody could not reasonably be attributed to someone other than the author of the work being parodied (although see Derogatory treatment below). There is also no need for a parody to "...relate to the original work itself or mention the source of the parodied work."

## Practical considerations

When determining whether or not your use of a copyright work or works is likely to fall within this fair dealing exception, it is suggested that the following matters are considered:

1. Firstly, determine what copyright works you are intending using in your caricature, parody, or pastiche. It may be useful to list them.
2. In respect of each copyright work, ask yourself whether they are being used for the purposes of caricature, parody or pastiche? Note it may be that your use qualifies as both parody and pastiche, even perhaps all three.
3. In order to ascertain your use is for the purposes of caricature, parody or pastiche, analyse what it is you are intending to do and consider the definitions closely. For example, if you want to fair deal with a work for the purpose of parody, ask yourself whether the work that you are creating imitates another work for humorous or satirical effect. Furthermore, does it evoke an existing work, whilst being noticeably different from it? If the answer to all these questions is 'yes', it is likely that you will be justified in using limited amounts of existing copyright works under this limb of fair dealing; if the answer is 'no' to any of these questions, it is unlikely that you will be able to rely on the parody fair dealing exception.
4. Next, consider what it is you are using or 'borrowing' from other work(s). How much of the original have you taken? Is it reasonable or appropriate to take as much as you have for the relevant purpose? When fair dealing, usually only part of a work may be used. If you are taking a limited amount of another work and 'building on it' for the purposes of parody etc. this is more likely to fall within the exception.
5. Consider also whether the use might affect the market for the original work. Generally it has been held that use is not 'fair' (and thus not fair dealing) where the use acts as a substitute for the original, causing a copyright owner to be out of pocket i.e. it devalues the work being fair dealt.

## Derogatory treatments

Under copyright law, authors of copyright works are entitled to object to a 'derogatory treatment' of their work(s). A 'treatment' in this context means in general any addition to, deletion from or alteration to or adaptation of the work. Accordingly, this right would at first glance appear to sit most uneasily with the new defence of "fair dealing with a work for the purposes of caricature, parody or

pastiche”, as such purposes are highly likely to involve a ‘treatment’ of existing copyright works, and may well be derogatory, certainly in the eyes of the author. In addition, fair dealing is no defence to an author’s objection to a derogatory treatment of his/her work(s).

Accordingly, when fair dealing for the purpose of review or critique, for example, we are always careful not to alter or change the work (other than basic editing of clips or perhaps slow-mo – see Fair dealing for the purpose of criticism or review above), lest it amount to a derogatory treatment.

How then can we fair deal for the purposes of caricature, parody or pastiche where altering, changing, ‘building on’ copyright works is inherent in what is being done? The answer lies in what makes a treatment derogatory. Statute provides that in order to amount to a derogatory treatment, the treatment must (objectively) be one which is “prejudicial to the author’s honour or reputation”. What this means is that if it is clear to viewers that the parody (or caricature, pastiche) is the work of someone other than the author of the work being parodied e.g. the work of the programme-makers, it is most unlikely to be prejudicial to that author’s honour or reputation.

It is where viewers might reasonably conclude that the parody (or caricature, pastiche) is the work of the original author (i.e. the author of the work being parodied) that problems may arise.

Accordingly, whilst to qualify as a parody in law, it does not matter if the parody could not reasonably be attributed to someone other than the author of the work being parodied (as per Deckmyn), there are good reasons to make sure that it is clear, in relation to any parody etc. relying on this fair dealing exception, that it’s is the work of someone other than the author of the work being parodied.

## How do I get hold of the copyright work?

(The following is applicable to all types/limbs of fair dealing.)

The sourcing of the copyright work must be fair. You must not obtain it in any unlawful, devious or underhand way e.g. obtaining preview tapes from a copyright owner by pretending that you intend to license clips.

If you have already signed a licence or if you have already begun negotiating a licence or licence fee you may have created a contractual relationship where it would

not be possible to 'fair deal'. In such circumstances, you must seek immediate advice from your programme lawyer.

In the Clockwork Orange case, concerning "fair dealing for the purposes of review or critique", a laser disc of the film was legitimately purchased in Paris and then brought to the UK and transferred to BETA. This was deemed by the Court to be a fair method of obtaining the material. Similarly, recording material off-air would be deemed to be acceptable.

### How much of the copyright work am I allowed to use?

You are only permitted to use a 'fair' amount of the copyright work.

As a guide, the clips should not be unreasonably long or frequent in use. Each clip must be justified in terms of its duration and its relevancy to the purpose it's being used for.

In the Clockwork Orange case (a case concerning fair dealing for the purposes of review or critique), the programme consisted of a total of 12 minutes of clips from the movie in a 30-minute programme. The Court accepted that one could not do justice to a review of the film unless one showed a number of clips from it.

### Do I need to inform the copyright owner before transmission?

There is no requirement and it is generally inadvisable to inform the copyright owner before transmission. It is not necessary for the copyright owner to have refused permission in order to fair deal material.

Sometimes, we may decide to inform a rights holder that we are intending to use clips of their material under 'fair dealing' before transmission. However, this is only rarely the case and you should check with your programme lawyer before contacting rights holders to inform them of your intention to 'fair deal' material.

If you plan to 'fair deal' any Comharra purchased programmes or films, you must ensure that your commissioning editor is made aware as soon as possible, as this may give rise to potential contractual/commercial issues. This is not intended to restrict your right to legitimately 'fair deal' but to ensure that it does not compromise



the broadcaster's contractual relationships with suppliers.

\* Time Warner took legal action against Channel 4 to prevent clips from the film 'A Clockwork Orange', which it owned, being used in a programme critique. Time Warner failed and the programme was broadcast. This was the first case to test the 'fair dealing' legislation (for the purposes of criticism and review) and laid down many of the guiding principles

coif you are unsure if anything you are using would breach Fair Use then please contact your project lead.