

Australian Copyright Council

Table of contents for book title

Following is the table of contents for one of our book titles. To order a book:

- go to www.copyright.org.au and click “Order Form” to download an order form
- email, fax or post us your contact details, payment details and the book title or number:
 - sales@copyright.org.au
 - fax to +61 2 9698 3536
 - post to 245 Chalmers Street Redfern NSW 2016 Australia
- contact Customer Service on sales@copyright.org.au or tel +61 2 9699 3247

Australian Copyright Council
245 Chalmers Street Redfern, NSW 2016 Australia ACN 001 228 780
Telephone: 61 2 9318 1788 Fax: 61 2 9698 3536 Email: info@copyright.org.au
www.copyright.org.au

Fair Dealing in the Digital Age

Table of contents

| | |
|--|----|
| PART 1: INTRODUCTION..... | 1 |
| 1.1 Who this book is for..... | 1 |
| 1.2 Overview of this book..... | 1 |
| 1.3 Sources of copyright law, & references to legislation & cases..... | 2 |
| 1.4 Future editions of this book..... | 2 |
| PART 2: SETTING THE SCENE..... | 3 |
| PART 3: DEVELOPMENT OF FAIR DEALING..... | 5 |
| 3.1 The development of a “fair dealing” defence at common law..... | 5 |
| a. Nature of the use..... | 5 |
| b. Effect of the dealing on the author’s market..... | 6 |
| c. The “public interest”..... | 6 |
| 3.2 The development of statutory fair dealing defences..... | 7 |
| a. Copyright Act 1911 (UK)..... | 7 |
| b. Copyright Act 1968 (Cth)..... | 7 |
| c. Franki Committee report..... | 8 |
| d. Extension of fair dealing to audiovisual material..... | 8 |
| e. Recent developments..... | 9 |
| 3.3 Introduction of library copying provisions corresponding to fair dealing defences..... | 9 |
| PART 4: FAIR DEALING UNDER THE COPYRIGHT ACT 1968..... | 11 |
| 4.1 Introduction..... | 11 |
| 4.2 Principles underlying the fair dealing defences..... | 11 |
| a. Fostering the creation of new works..... | 12 |
| b. Protecting the copyright owner’s legitimate market..... | 12 |
| c. Access of the community to ideas & information..... | 13 |
| 4.3 Purposes for fair dealing..... | 14 |
| a. Research or study..... | 14 |
| b. Criticism or review..... | 16 |
| c. Reporting the news..... | 18 |
| d. Professional advice..... | 20 |
| 4.4 Assessing the fairness of a dealing..... | 20 |
| a. The purpose and character of the use..... | 21 |
| b. The nature of the work, including whether the work is published..... | 22 |
| c. The market impact of the dealing..... | 23 |
| d. If the work was improperly obtained..... | 23 |
| e. The nature of the copyright owner..... | 24 |
| f. The existence of statutory licences..... | 24 |
| 4.5 Who is entitled to rely on the fair dealing defences..... | 25 |
| a. Individuals and their agents..... | 25 |
| b. Commercial organisations..... | 26 |
| c. Educational institutions and government bodies..... | 26 |
| 4.6 Fair dealing and performers’ rights..... | 27 |

| | |
|---|----|
| PART 5: DIGITAL TECHNOLOGY: IMPLICATIONS FOR FAIR DEALING | 29 |
| 5.1 Changes in the material protected by copyright..... | 29 |
| 5.2 Changes in the nature of the use of copyright material..... | 30 |
| a. The “ordinary use” of works..... | 30 |
| b. The ease of manipulation and re-use of information which is available in a digital format..... | 31 |
| c. The loss of “centrality” of the copyright owner..... | 32 |
| d. The “de-materialisation” of copyright works..... | 33 |
| 5.3 Changes in the normal exploitation of copyright material..... | 34 |
| 5.4 Changes in practicalities..... | 36 |
| a. Collective administration..... | 36 |
| b. Technological developments..... | 37 |
| c. Impact of these changes on the fair dealing defences..... | 39 |
| 5.5 Implications of these changes..... | 40 |
| PART 6: CURRENT PROPOSALS FOR CHANGE IN AUSTRALIA | 43 |
| 6.1 Australia’s current international obligations..... | 43 |
| 6.2 Recent international developments..... | 45 |
| a. WIPO Copyright Treaty and WIPO Performances and Phonograms Treaty..... | 45 |
| b. EC Draft Directive on Copyright and Related Rights in the Information Society..... | 46 |
| 6.3 Government’s “digital agenda” policy..... | 46 |
| 6.4 CLRC recommendations: summary..... | 48 |
| a. Fair dealing..... | 48 |
| b. Use of a “prescribed portion” for research or study..... | 49 |
| c. Copying by libraries and archives..... | 49 |
| 6.5 Some comments on the CLRC recommendations..... | 51 |
| a. New means of “normal use” of copyright material..... | 51 |
| b. The “balance” between owners’ rights and users’ interests..... | 51 |
| c. The “open-ended” fair dealing defence..... | 51 |
| d. “Prescribed portion” defence..... | 52 |
| e. Fair dealing by libraries..... | 52 |
| f. Effect of technological devices and contractual obligations..... | 52 |
| APPENDIX 1: OVERVIEW OF COPYRIGHT..... | 53 |
| APPENDIX 2: COMPARABLE PROVISIONS IN OTHER COUNTRIES | 56 |
| United Kingdom..... | 56 |
| United States..... | 57 |
| France | 57 |
| Belgium..... | 58 |
| Germany..... | 59 |
| The Netherlands..... | 60 |
| APPENDIX 3: FAIR DEALING CASES..... | 61 |
| SELECT BIBLIOGRAPHY..... | 66 |
| OTHER COPYRIGHT COUNCIL PUBLICATIONS..... | 69 |