

“Copyright Reform” Outside the United States

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Copyright Reviews Around the World

- Australia
- European Union
 - European Commission
 - United Kingdom
 - Ireland
 - France
- Hong Kong



Australian Government
Australian Law Reform Commission

Copyright and the Digital Economy

FINAL REPORT

Australia – ALRC Recommendations

The recommendations

A flexible fair use exception

An alternative: a new fair dealing exception

Specific exceptions

Reform of statutory licences

Orphan works

Broadcasting

Contracting out

Australia ALRC – Fair Use

Recommendation 5–2 The non-exhaustive list of fairness factors should be:

- (a) the purpose and character of the use;
- (b) the nature of the copyright material;
- (c) the amount and substantiality of the part used; and
- (d) the effect of the use upon the potential market for, or value of, the copyright material.

Recommendation 5–3 The non-exhaustive list of illustrative purposes should include the following:

- (a) research or study;
- (b) criticism or review;
- (c) parody or satire;
- (d) reporting news;
- (e) professional advice;
- (f) quotation;
- (g) non-commercial private use;
- (h) incidental or technical use
- (i) library or archive use;
- (j) education; and
- (k) access for people with disability.



Australia ALRC – Fair Dealing

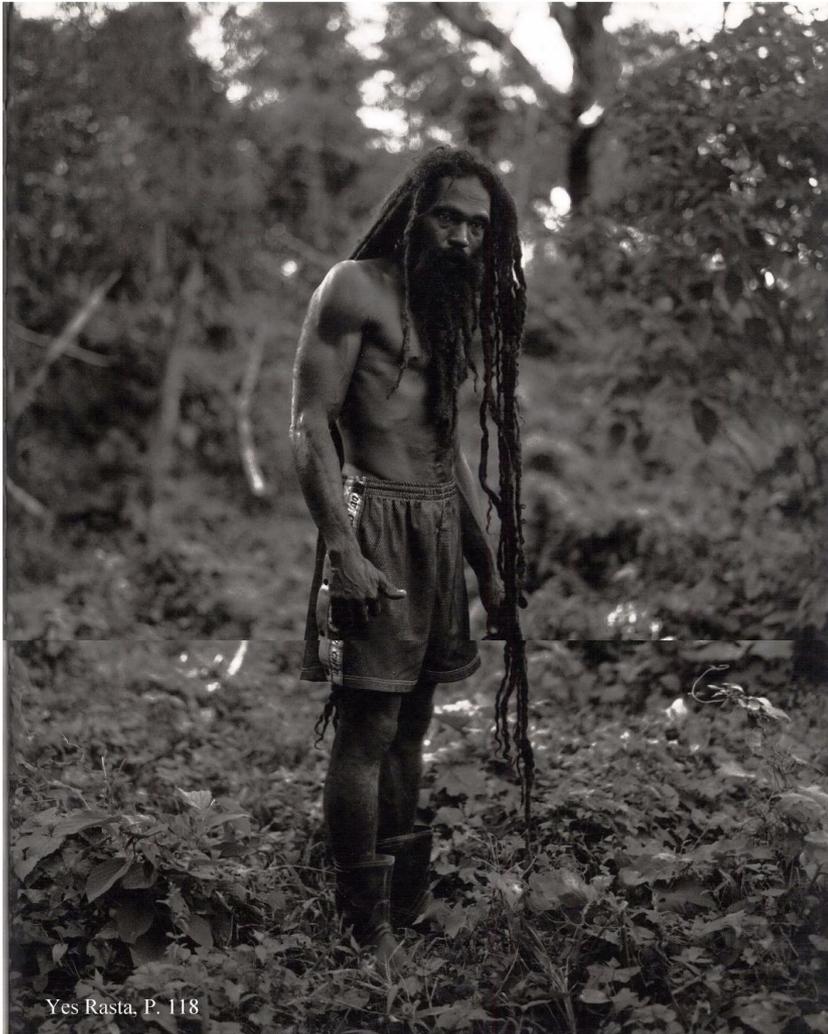
6. The New Fair Dealing Exception

Recommendation 6–1 If fair use is not enacted, the *Copyright Act should be amended to provide that a fair dealing with copyright material for one of the following purposes does not infringe copyright:*

- (a) research or study;
- (b) criticism or review;
- (c) parody or satire;
- (d) reporting news;
- (e) professional advice;
- (f) quotation;
- (g) non-commercial private use;
- (h) incidental or technical use;
- (i) library or archive use;
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Why not Adopt Fair Use?

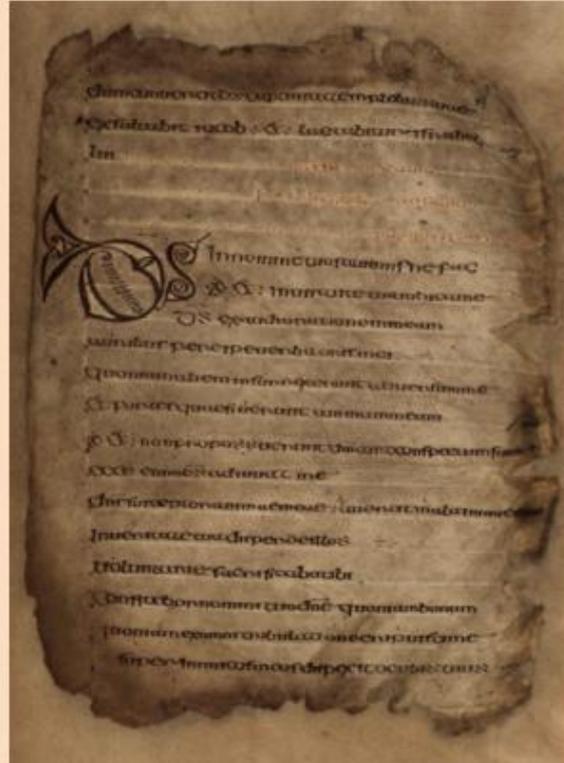


www.ca2.courts.gov/Docs/opi1197/Prinos/A-777, The Ocean Club, Richard Prinos.jpg[26/04/2013 18:37:20]

Transformative Use

“The central purpose of this investigation is to see, in Justice Story's words, **whether the new work merely "supersede[s] the objects" of the original creation**, *Folsom v. Marsh, supra*, at 348; accord, *Harper & Row, supra*, at 562 ("supplanting" the original), **or instead adds something new, with a further purpose or different character, altering the first with new expression, meaning, or message**; it asks, in other words, whether and to what extent the new work is **'transformative.'** “The central purpose of this investigation is to see, in Justice Story's words, **whether the new work merely "supersede[s] the objects" of the original creation**, *Folsom v. Marsh, supra*, at 348; accord, *Harper & Row, supra*, at 562 ("supplanting" the original), **or instead adds something new, with a further purpose or different character, altering the first with new expression, meaning, or message**; it asks, in other words, whether and to what extent the new work is **'transformative.'** Leval 1111. 

Modernising Copyright



The Report of the
Copyright Review Committee

Dublin, 2013

Ireland

- Irish Copyright Review Committee Report, *Modernising Copyright*, released Oct. 29, 2013.
 - First sentence: “Copyright reform is in the air.”
- **Recommendations:**
 - “[T]ightly-drafted and balanced exceptions for innovation and fair use.”
 - **Innovation:** it should not be an infringement of copyright to derive an original work which either substantially differs from, or substantially transforms, the initial work.

Innovation

“106E. Innovation.

- (1) It is not an infringement of the rights conferred by this Part if the owner or lawful user of a work (the initial work) derives from it an innovative work.
- (2) An innovative work is an original work which is substantially different from the initial work, or which is a substantial transformation of the initial work.
- (3) The innovative work must not
 - (a) conflict with the normal exploitation of the initial work, or
 - (b) unreasonably prejudice the legitimate interests of the owner of the rights in the initial work.

Ireland

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 - First sentence: “Copyright reform is in the air.”
- **Recommendations:**
 - “[T]ightly-drafted and balanced exceptions for innovation and fair use.”
 - **Innovation:** it should not be an infringement of copyright to derive an original work which either substantially differs from, or substantially transforms, the initial work.
 - “[C]ircumspect, and differs substantially from the US doctrine. ... [W]hether a use is fair on any given set of facts turns on the application of up to eight separate

Proposed Statutory Text

“49A. Fair use.

- (1) The fair use of a work is not an infringement of the rights conferred by this Part.
- (2) The other acts permitted by this Part shall be regarded as examples of fair use, and, in any particular case, the court shall not consider whether a use constitutes a fair use without first considering whether that use amounts to another act permitted by this Part.
- (3) For the purposes of this section, the court shall, in determining whether the use made of a work in any particular case is a fair use, take into account such matters as the court considers relevant, including any or some or all of the following ...

Proposed Fair Use Factors

- (a) the extent to which the use in question is analogically similar or related to the other acts permitted by this Part,
- (b) the purpose and character of the use in question, including in particular whether
 - (i) it is incidental, non-commercial, non-consumptive, personal or transformative in nature, or
 - (ii) if the use were not a fair use within the meaning of the section, it would otherwise have constituted a secondary infringement of the right conferred by this Part,
- (c) the nature of the work, including in particular whether there is a public benefit or interest in its dissemination through the use in question,
- (d) the amount and substantiality of the portion used, quantitatively and qualitatively, in relation to the work as a whole,



Proposed Fair Use Factors

- (e) the impact of the use upon the normal commercial exploitation of the work, having regard to matters such as its age, value and potential market,
- (f) the possibility of obtaining the work, or sufficient rights therein, within a reasonable time at an ordinary commercial price, such that the use in question is not necessary in all the circumstances of the case,
- (g) whether the legitimate interests of the owner of the rights in the work are unreasonably prejudiced by the use in question, and
- (h) whether the use in question is accompanied by a sufficient acknowledgement, unless to do so would be unreasonable or inappropriate or impossible for reasons of practicality or otherwise.



Ireland

- **Is this compatible with the Directive on Copyright in the Information Society?**
 - I.e., are the innovation and fair use exceptions among the exceptions permitted by the Directive?
 - *“ In the absence of any clear argument rebutting our view that the EUCD has not harmonised the adaptation right, we do not accept that our draft is necessarily incompatible with that Directive.”*
 - **But what about the reproduction right?**

Ireland

- Recommendations (continued):
 - Provide an exception for private copying, with no levies to compensate rightholders, including for
 - Private and personal use (reproductions on paper)
 - Format-shifting (including “in the Cloud”)
 - Back-up copies.
 - Bring IP claims within existing small claims procedures
 - Establish specialist IP court in the Circuit Court
 - Linking: Except when it is in the public interest (e.g., to “expose” sites that stream pirated films”), it should not be an infringement to provide an Internet link unless it’s with concurrent knowledge that it connects to an infringing copy.
 - It should not be an infringement to include snippets next to links.

Ireland

- **Recommendations** (continued):
 - “Fair dealing exception for caricature, parody, pastiche, or satire, or for other similar or related purposes.
 - Exception for noncommercial user-generated content (similar to Canadian exception) -- *but only if*:
 - the creation and communication of the new work or recording does not have a substantial adverse effect, financial or otherwise, on the exploitation or potential exploitation of the existing recording or on an existing or potential market for it, including that the new work or recording is not a substitute for the existing recording.
 - Remedies: No monetary damages when infringement was unintentional or otherwise innocent, except in exceptional cases.

United Kingdom

Hargreaves Implementation – regulations submitted to Parliament:

- **Caricature, parody & pastiche.**
- **Quotation:** (expansion beyond “criticism or review”)
- **Research and private study.**
- **Education.**
- **Text & data-mining.**
- **Archiving and preservation.**
- **Public administration.**
- **Disabled access formats.**
- **Personal copies made for private use.**
 - No levies.

Directive 2001/29/EC

Art 5(2)

Member States may provide for exceptions or limitations to the reproduction right provided for in Article 2 in the following cases:

(a) in respect of reproductions on paper or any similar medium, effected by the use of any kind of photographic technique or by some other process having similar effects, with the exception of sheet music, ***provided that the rightholders receive fair compensation***;

(b) in respect of reproductions on any medium made by a natural person for private use and for ends that are neither directly nor indirectly commercial, ***on condition that the rightholders receive fair compensation*** which takes account of the application or non-application of technological measures referred to in Article 6 to the work or subject-matter concerned;

Hong Kong

- Government proposes to enact a fair dealing exception for parody, satire, caricature and pastiche.
 - In connection with proposal to enact provision communication to the public.
- Government advises against enactment of UGC exception similar to Canadian exception.

EU Consultation

- Rights and the functioning of the Single Market
 - Why is it not possible to access many online content services from anywhere in Europe?
 - Is there a need for more clarity as regards the scope of what needs to be authorised (or not) in digital transmissions?
 1. The act of “making available”
 2. Two rights involved in a single act of exploitation
 3. Linking and browsing
 4. Download to own digital content
 - Registration of works and other subject matter – is it a good idea?
 - How to improve the use and interoperability of identifiers
 - Term of protection – is it appropriate?

EU Consultation

- Limitations and exceptions in the Single Market
 - Access to content in libraries and archives
 1. Preservation and archiving
 2. Off-premises access to library collections
 3. E – lending
 4. Mass digitisation
 - Teaching
 - Research
 - Disabilities
 - Text and data mining
 - User-generated content
 - Private copying and reprography
 - Fair remuneration of authors and performers
 - Respect for rights
 - A single EU Copyright Title
 - Other issues