

Lecture 4

Permitted Acts

1. Introduction

The copyright law permits certain acts which would otherwise amount to copyright infringement. These ``permitted acts'' are in general designed to balance the interests of copyright owners with the public interest, and some of the provisions show up important conflicts between the two.

The Berne Convention allows for exceptions to be made to the rights in works protected under the Convention in certain specified cases. The three requirements, namely that permission to reproduce literary and artistic works may be granted (i) in certain special cases, where the reproduction (ii) does not conflict with the normal exploitation of the work and (iii) does not unreasonably prejudice the legitimate interests of the author, are known as the Berne ``3-step'' test.

Various European Directives have made piecemeal provisions affecting exceptions which Member States either must or may make to the various rights which are the subject matter of such Directives.

The permitted acts are grouped together into various categories such as temporary copying, fair dealing exception, visual impairment, education, libraries and archives, public administration, etc.

These permitted acts are to be construed independently of each other, so that just because an act does not fall within one provision does not mean that it is not covered by another. In addition, the provisions relating to permitted acts are to apply to works of every description, except where a more limited class of works is specified.

2. The making of temporary copies

Copyright in a literary work, (other than a computer program or a database), or in a dramatic, musical or artistic work, the typographical arrangement of a published edition, a sound recording or a film, is not infringed by the making of a temporary copy which is transient or incidental, which is an integral and essential part of a technological process and the sole purpose of which is to enable:

(i) a transmission of the work in a network between third parties by an intermediary (such as a service provider); or

(ii) a lawful use of the work;

and which has no independent economic significance.

The essential points to be noted are:

(i) The permitted act only extends to the restricted act of copying. If, for example, as part of the same process, the work is communicated to the public via the internet, there is no defence under this provision to the act of communication.

(ii) The permitted act only extends to the making of a temporary copy of the work. ``Temporary`` implies that the copy will be deleted, destroyed or will otherwise disappear within some limited time. An essential nature of a temporary copy is that it lacks permanence. A copy made in RAM which ceases to exist when a computer is turned off, or a copy displayed on a computer screen to enable browsing will no doubt normally fall within the exception.

(iii) The copy must not only be temporary but also be transient or incidental. The copying must take place as an integral and essential part of a technological process. This implies that without the copying the process will fail to achieve its designed objective.

3. The Fair Dealing provisions

The fair dealing provisions provide three important limitations to owner's rights, namely fair dealing for the purposes of non-commercial research or private study, fair dealing for the purposes of criticism or review and fair dealing for the purposes of news reporting. Other types of dealings are often not permitted, no matter how ``fair`` they may be.

The fair use provisions under United States law provide guidelines as to what amounts to fair use and which are available in relation to all types of work. Such a similar approach has been advocated in Europe, but faces resistance from the codified system prevalent in the EU.

A. Non-Commercial Research and Private Study

The general aim of these provisions is to give students and non-commercial researchers greater access to copyright works.

(i) Non commercial research

Fair dealing with a literary, dramatic, musical or artistic work for the purposes of research for a non-commercial purpose does not infringe any copyright in the work provided that it is accompanied by a sufficient acknowledgement, unless this is impossible, for reasons of practicability or otherwise. The acknowledgement of the work may take the form of identification of its title or some other description of it.

(ii) Private Study

Fair dealing with a literary, dramatic, musical or artistic work for the purposes of private study does not infringe any copyright in the work. Private study excludes any study which is directly or indirectly for a commercial purpose. No acknowledgement is required in the case of this permitted act.

(iii) Copying by a person other than the student or researcher

Copying by a person other than the researcher or student himself is not fair dealing if –

(a) in the case of a librarian, or a person acting on behalf of a librarian, he does anything which goes beyond what is permissible under the provisions which specifically relate to copying by such persons (dealt later)

(b) in any other case, the person doing the copying knows or has reason to believe that it will result in copies of substantially the same material being provided to more than one person at substantially the same time and for substantially the same purpose.

Thus there is no defence under this provision if a teacher makes multiple copies of a work for use by classroom students. On the other hand, a student or researcher may ask another to make a copy of a work.

B. Criticism or Review

Fair dealing with a work for the purpose of criticism or review, of that or another work or of a performance of a work, does not infringe any copyright in the work provided that it is accompanied by a sufficient acknowledgement and provided that the work has been made available to the public.

“Review” means a critical article or report, as in a periodical, or some literary work, commonly some work of recent appearance; a critique

“Criticism” has been defined as the act or art of analysing and judging the quality of a literary or artistic work; the act of passing judgment as to the merits of something; a critical comment, article or essay.

A parody or caricature can be considered as a form of criticism, and is exempted under Article 5(3)(k) of the Information Society Directive.

A work has been made available to the public if it has been made available by any means, including -

- (i) the issue of copies to the public;
- (ii) making the work available by means of an electronic retrieval system;
- (iii) the rental or lending of copies of the work to the public;
- (iv) the performance, exhibition, playing or showing of the work in public;
- (v) the communication to the public of the work,

but in determining generally whether a work has been made available to the public no account shall be taken of any unauthorised act.

C. Reporting current events

It has always been accepted that fair use of a work should be allowed for the purposes of news reporting. Thus fair dealing with a work (other than a photograph) for the purpose of reporting current events does not infringe any copyright in the work provided that it is accompanied by

a sufficient acknowledgement. No acknowledgement is required in connection with the reporting of current events by means of a sound recording, film or broadcast where this would be impossible for reasons of practicality or otherwise.

The work must be used for reporting current events and not for editorial or other purposes. Reporting must consist of reporting to the public at large in some general sense and not the reporting to a closed circle. The work itself need not be current, provided that it is used properly to report current events. The events reported must, however, be current and not just a newsworthy matter of history, so that a UK newspaper was not able to rely on this provision of the law in using the death of the Duchess of Windsor as an excuse to reprint correspondence.

D. The concept of fairness

Although rather different policy considerations are involved with the various different fair dealing provisions, namely non-commercial research, private study, criticism, review, the reporting of current events and educational use, similar criteria of ``fairness`` are employed in considering whether the use in question amounts to ``fair`` dealing.

The position in the United States is laid down as follows:

§ 107 • Limitations on exclusive rights: Fair use

Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include—

- (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;*
- (2) the nature of the copyrighted work;*
- (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and*
- (4) the effect of the use upon the potential market for or value of the copyrighted work.*

The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.

In other countries, the test for fairness incorporates a number of similar considerations. Thus, fairness should be judged by the objective standard of whether a fair-minded and honest person would have dealt with the copyright work in the manner in which the defendant did, for the relevant purposes. Ultimately the decision must be a matter of impression.

Generally, cases of fair dealing for purposes of criticism, review and the reporting of current events usually raise more difficult problems than cases of non-commercial research and private study. The three most important factors for consideration are:

- (i) The degree to which the alleged infringing use competes with exploitation of the copyright work by the owner. Clearly, if a criticism or review of a work competes with it in the sense

that the criticism or review will act as an acceptable substitute to the public, this will be highly relevant. The test should be understood as referring not just to competition with the actual form of media in which the claimant exploits his work but any form of activity which potentially affects the value of the copyright work.

(ii) Whether the work has been published or not. If the work is unpublished, often any dealing is unlikely to be fair.

(iii) The extent of the use and the importance of what has been taken. In most cases there will be a grey area between the threshold of substantial part (below which no infringement occurs in any event) and a use which is so substantial as to be unfair. Here, a useful test may be whether it was necessary to use as much as the defendant did for the relevant purpose. There will however be no precise boundary line between what is fair and unfair. Occasionally, it may be fair to reproduce the whole of a work, particularly if it is very short and it may well be fair to copy the whole of a longer work if this is preparatory to making a decision as to which parts to use for a relevant dealing.

(iv) The motives of the alleged infringer: for example, was the use merely dressed up in the guise of criticism or review?

(v) The purpose of the use: was the use necessary at all to make the point in question?

(vi) The fact that the copy of a previously unpublished work was obtained by the defendant by theft or other misappropriation.

Please see the following cases:

Hubbard And Another v. Vosper And Another (where copyright infringement of a literary work was alleged. Substantial extracts were used with acknowledgment for criticism of ``Scientology cult``. The question arose whether this constituted fair dealing for purposes of criticism)

Pro Sieben Media A.G. v. Carlton U.K. Television Ltd. And Another (where use was made of extract from exclusive television interview. The question arose whether "fair dealing" with original work "for the purpose of criticism or review" or "for the purpose of reporting current events" was shown)

Ashdown v. Telegraph Group Ltd (where a political leader's diary extract was leaked to the defendant and the extract was published in defendant's newspaper. The effect of Article 10 of the European Convention on Human Rights (right to freedom of expression) in interpretation of defences and scope of public interest defence was studied)

Hyde Park Residence Ltd v. Yelland (which dealt with the circumstances related with the late Princess Diana and stills from a film which were published in a newspaper. The issue of fair dealing for the purpose of reporting current events was raised)

E. Incidental inclusion of copyright material

Copyright in a work is not infringed by its incidental inclusion in an artistic work, sound recording, film or broadcast. Where by virtue of the above, the making of a copy was not an infringement of copyright in a work, then the issue to the public of such copies, or the playing, showing or communication to the public, of anything whose making was not an infringement of the copyright, will not infringe the copyright in the work either.

There would seem to be three justifications for such a provision:

(i) In relation to photographers, film makers and broadcasters, it is justifiable on the grounds that it will often be very difficult to obtain permission from the owners of all the works reproduced in the photograph, film or broadcast. Consider the live broadcast of a sporting event. Without such a provision a broadcaster might infringe copyright by broadcasting a sound recording which is being played over the public address system or by including shots of an advertising hoarding.

(ii) The incidental use of a work will in any event not detract from the market for the original and in certain circumstances may even enhance it. This point has been accepted in a number of American cases, with the result that incidental inclusion has been held to fall within the fair use defence, there being no specific provisions in the US Act dealing with this matter.

(iii) It allows film makers and broadcasters a degree of artistic freedom by allowing them to set the activities of their characters in a wide variety of settings. Thus no special permission is needed to film against the background of a play being performed in a theatre. Indeed without some form of exception an artist, photographer, film maker or broadcaster could not even include images of a building in his work without infringing the architect's copyright.

Overall, these provisions have a great deal of importance for photographers, advertisers, film makers and broadcasters.

The word "incidental" is an ordinary English word. It has been said that it is impossible to provide a definition that will be satisfactory for all purposes: what is incidental will depend on all the circumstances of the case.

A musical work, words spoken or sung with music, or so much of a sound recording or broadcast as includes a musical work or such words, shall not be regarded as incidentally included in another work if it is deliberately included.

Please see: Football Association Premier League Limited v. Pamina UK Limited in this regard.

4. Visual Impairment

With the exception of a few commercial publishers of large-print and audio books, most publishers do not find it economic to publish works adapted to suit the needs of visually impaired people.

The Information Society Directive permits Member States to provide an exception to the reproduction right, to the communication to the public rights, and the distribution right, in the case of uses for the benefit of people with a disability, which are directly related to the disability and of a non-commercial nature.

Thus, the copyright laws may provide if a visually impaired person has lawful possession or lawful use of a copy ('the master copy') of the whole or part of a literary, dramatic, musical or artistic work; or a published edition, which is not accessible to him because of the impairment, it is not an infringement of copyright in the work, for an accessible copy of the master copy to be made for his personal use.

However, the above does not apply:

(i) if the master copy is of a musical work, or part of a musical work, and the making of an accessible copy would involve recording a performance of the work or part of it; or

(ii) if the master copy is of a database, or part of a database, and the making of an accessible copy would infringe copyright in the database.

(iii) in relation to the making of an accessible copy for a particular visually impaired person if, or to the extent that, copies of the copyright work are commercially available, by or with the authority of the copyright owner, in a form that is accessible to that person.

``Visually impaired person`` means a person who is blind; who has an impairment of visual function which cannot be improved, by the use of corrective lenses, to a level that would normally be acceptable for reading without a special level or kind of light; who is unable, through physical disability, to hold or manipulate a book; or who is unable, through physical disability, to focus or move his eyes to the extent that would normally be acceptable for reading.

``Accessible copy``, in relation to a copyright work, means a version which provides for a visually impaired person improved access to the work.

5. Education

One of the clearest examples of a strong public interest in limiting copyright protection is in the field of education. However, just because education is a worthy cause does not mean that some form of blanket exception to copyright should be allowed. It must be remembered that it is works made for educational purposes that will often be copied in educational establishments. A wide exemption would therefore undermine the market for such works, so that a publisher would be unlikely to invest in their production.

The Information Society Directive seeks to promote learning and culture by protecting works and other subject-matter while permitting exceptions or limitations in the public interest for the purpose of education and teaching. It restricts the permitted acts to non-commercial purposes.

A. Things done for purposes of instruction or examination

(i) Copyright in a *literary, dramatic, musical or artistic work* is not infringed by its being copied in the course of instruction or of preparation for instruction, provided the copying:

(a) is done by a person giving or receiving instruction,

(b) is not done by means of a reprographic process, and

(c) is accompanied by a sufficient acknowledgement, and provided that the instruction is for a non-commercial purpose.

“Reprographic process” means a process for making facsimile copies, or involving the use of an appliance for making multiple copies, and includes, in relation to a work held in electronic form, any copying by electronic means, but does not include the making of a film or sound recording.

Thus, for example, a teacher may copy onto a blackboard a substantial part of a literary work, and pupils may copy it down. The teacher may not, however, photocopy the same material for use by students in the absence of a licensing agreement.

(ii) Copyright in a *sound recording, film or broadcast* is not infringed by its being copied by making a film or film sound-track in the course of instruction, or of preparation for instruction, in the making of films or film sound-tracks, provided the copying is done by a person giving or receiving instruction, and is accompanied by a sufficient acknowledgement, and provided that the instruction is for a non-commercial purpose.

(iii) Copyright in a *literary, dramatic, musical or artistic work which has been made available to the public*¹ is not infringed by its being copied in the course of instruction or of preparation for instruction, provided the copying:

(a) is fair dealing with the work,

(b) is done by a person giving or receiving instruction,

(c) is not done by means of a reprographic process, and

(d) is accompanied by a sufficient acknowledgement.

(iv) Copyright is not infringed by anything done for the purposes of an *examination* by way of setting the questions, communicating the questions to the candidates or answering the questions, provided that the questions are accompanied by a sufficient acknowledgement.

¹ A work has been made available to the public if it has been made available by any means, including:

(a) the issue of copies to the public;

(b) making the work available by means of an electronic retrieval system;

(c) the rental or lending of copies of the work to the public;

(d) the performance, exhibition, playing or showing of the work in public;

(e) the communication to the public of the work,

but in determining generally for the purposes of that subsection whether a work has been made available to the public no account shall be taken of any unauthorised act

B. Performing, playing or showing work in course of activities of educational establishment

(i) The performance of a literary, dramatic or musical work before an audience consisting of teachers and pupils at an educational establishment and other persons directly connected with the activities of the establishment:

(a) by a teacher or pupil in the course of the activities of the establishment, or

(b) at the establishment by any person for the purposes of instruction,

is not a public performance for the purposes of infringement of copyright.

(ii) The playing or showing of a sound recording, film or broadcast before such an audience at an educational establishment for the purposes of instruction is not a playing or showing of the work in public for the purposes of infringement of copyright.

A person is not for this purpose directly connected with the activities of the educational establishment simply because he is the parent of a pupil at the establishment.

C. Recording by educational establishments of broadcasts

A recording of a broadcast, or a copy of such a recording, may be made by or on behalf of an educational establishment for the educational purposes of that establishment without thereby infringing the copyright in the broadcast, or in any work included in it, provided that it is accompanied by a sufficient acknowledgement of the broadcast and that the educational purposes are non-commercial.

Copyright is not infringed where a recording of a broadcast or a copy of such a recording, whose making was by virtue of above is not an infringement of copyright, is communicated to the public by a person situated within the premises of an educational establishment provided that the communication cannot be received by any person situated outside the premises of that establishment.

D. Reprographic copying by educational establishments of passages from published works

Reprographic copies of passages from published literary, dramatic or musical works may be made by or on behalf of an educational establishment for the purposes of instruction without infringing any copyright in the work, provided that they are accompanied by a sufficient acknowledgement and the instruction is for a non-commercial purpose.

In the UK, not more than one per cent of any work may be copied by or on behalf of an establishment by virtue of this provision in any quarter, that is, in any period 1st January to 31st March, 1st April to 30th June, 1st July to 30th September or 1st October to 31st December. However, copying is not authorised if, or to the extent that, licences are available authorising the copying in question and the person making the copies knew or ought to have been aware of that fact.

In the **United States**, guidelines setting out the minimum amount which may be safely copied were agreed upon by authors, publishers and educational establishments and approved by Congress: HR Rep. No. 94-1476, 94th Congress² as follows:

94TH CONGRESS 2d Session	}	HOUSE OF REPRESENTATIVES	{	REPORT No. 94-1476
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AGREEMENT ON GUIDELINES FOR CLASSROOM COPYING IN NOT-FOR-PROFIT EDUCATIONAL INSTITUTIONS

WITH RESPECT TO BOOKS AND PERIODICALS

The purpose of the following guidelines is to state the minimum and not the maximum standards of educational fair use under Section 107 of H.R. 2223. The parties agree that the conditions determining the extent of permissible copying for educational purposes may change in the future; that certain types of copying permitted under these guidelines may not be permissible in the future; and conversely that in the future other types of copying not permitted under these guidelines may be permissible under revised guidelines.

Moreover, the following statement of guidelines is not intended to limit the types of copying permitted under the standards of fair use under judicial decision and which are stated in Section 107 of the Copyright Revision Bill. There may be instances in which copying which does not fall within the guidelines stated below may nonetheless permitted under the criteria of fair use.

GUIDELINES

I. Single Copying for Teachers

A single copy may be made of any of the following by or for a teacher at his or her individual request for his or her scholarly research or use in teaching or preparation to teach a class:

A. A chapter from a book;

B. An article from a periodical or newspaper;

C. A short story, short essay or short poem, whether or not from a collective work;

D. A chart, graph, diagram, drawing, cartoon or picture, from a book, periodical, or newspaper;

II. Multiple Copies for Classroom Use

² http://en.wikisource.org/wiki/Copyright_Law_Revision_%28House_Report_No._94-1476%29/Annotated

Multiple copies (not to exceed in any event more than one copy per pupil in a course) may be made by or for the teacher giving the course for classroom use or discussion; provided that:

A. The copying meets the tests of brevity and spontaneity as defined below; and,

B. Meets the cumulative effect test as defined below; and,

C. Each copy includes a notice of copyright

Definitions

Brevity

(i) Poetry: (a) A complete poem if less than 250 words and if printed on not more than two pages or, (b) from a longer poem, an excerpt of not more than 250 words.

(ii) Prose: (a) Either a complete article, story or essay of less than 2,500 words, or (b) an excerpt from any prose work of not more than 1,000 words or 10% of the work, whichever is less, but in any event a minimum of 500 words.

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[Each of the numerical limits stated in “i” and “ii” above may be expanded to permit the completion of an unfinished line of a poem or of an unfinished prose paragraph.]

(iii) Illustration: One chart, graph, diagram, drawing, cartoon or picture per book or per periodical issue.

(iv) “Special” works: Certain works in poetry, prose or in “poetic prose” which often combine language with illustrations and which are intended sometimes for children and at other times for a more general audience fall short of 2,500 words in their entirety. Paragraph “ii” above notwithstanding such “special works” may not be reproduced in their entirety; however, an excerpt comprising not more than two of the published pages of such special work and containing not more than 10% of the words found in the text thereof, may be reproduced.

Spontaneity

(i) The copying is at the instance and inspiration of the individual teacher, and

(ii) The inspiration and decision to use the work and the moment of its use for maximum teaching effectiveness are so close in time that it would be unreasonable to expect a timely reply to a request for permission.

Cumulative Effect

(i) The copying of the material is for only one course in the school in which the copies are made.

(ii) Not more than one short poem, article, story, essay or two excerpts may be copied from the same author, nor more than three from the same collective work or periodical volume during one class term.

(iii) There shall not be more than nine instances of such multiple copying for one course during one class term.

[The limitations stated in “ii” and “iii” above shall not apply to current news periodicals and newspapers and current news sections of other periodicals.]

III. Prohibitions as to I and II Above

Notwithstanding any of the above, the following shall be prohibited:

(A) Copying shall not be used to create or to replace or substitute for anthologies, compilations or collective works. Such replacement or substitution may occur whether copies of various works or excerpts therefrom are accumulated or reproduced and used separately.

(B) There shall be no copying of or from works intended to be “consumable” in the course of study or of teaching. These include workbooks, exercises, standardized tests and test booklets and answer sheets and like consumable material.

(C) Copying shall not:

(a) substitute for the purchase of books, publishers’ reprints or periodicals;

(b) be directed by higher authority;

(c) be repeated with respect to the same item by the same teacher from term to term.

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(D) No charge shall be made to the student beyond the actual cost of the photocopying.

Agreed MARCH 19, 1976.

Ad Hoc Committee on Copyright Law Revision:

By SHELDON ELLIOTT STEINBACH.

Author-Publisher Group:

Authors League of America:

By IRWIN KARP, Counsel.

Association of American Publishers, Inc.:

By ALEXANDER C. HOFFMAN,

Chairman, Copyright Committee.

In a joint letter dated April 30, 1976, representatives of the Music Publishers' Association of the United States, Inc., the National Music Publishers' Association, Inc., the Music Teachers National Association, the Music Educators National Conference, the National Association of Schools of Music, and the Ad Hoc Committee on Copyright Law Revision, wrote to Chairman Kastenmeier as follows:

During the hearings on H.R. 2223 in June 1975, you and several of your subcommittee members suggested that concerned groups should work together in developing guidelines which would be helpful to clarify Section 107 of the bill.

Representatives of music educators and music publishers delayed their meetings until guidelines had been developed relative to books and periodicals. Shortly after that work was completed and those guidelines were forwarded to your subcommittee, representatives of the undersigned music organizations met together with representatives of the Ad Hoc Committee on Copyright Law Revision to draft guidelines relative to music.

We are very pleased to inform you that the discussions thus have been fruitful on the guidelines which have been developed. Since private music teachers are an important factor in music education, due consideration has been given to the concerns of that group.

We trust that this will be helpful in the report on the bill to clarify Fair Use as it applies to music.

The text of the guidelines accompanying this letter is as follows:

GUIDELINES FOR EDUCATIONAL USES OF MUSIC

The purpose of the following guidelines is to state the minimum and not the maximum standards of educational fair use under Section 107 of HR 2223. The parties agree that the conditions determining the extent of permissible copying for educational purposes may change in the future; that certain types of copying permitted under these guidelines may not be permissible in the future, and conversely that in the future other types of copying not permitted under these guidelines may be permissible under revised guidelines.

Moreover, the following statement of guidelines is not intended to limit the types of copying permitted under the standards of fair use under judicial decision and which are stated in Section 107 of the Copyright Revision Bill. There (p71) may be instances in which copying which does not fall within the guidelines stated below may nonetheless be permitted under the criteria of fair use.

A. Permissible Uses

1. Emergency copying to replace purchased copies which for any reason are not available for an imminent performance provided purchased replacement copies shall be substituted in due course.

2. (a) *For academic purposes other than performance, multiple copies of excerpts of works may be made, provided that the excerpts do not comprise a part of the whole which would constitute a performable unit such as a section, movement or aria, but in no case more than (10%^[33] of the whole work. The number of copies shall not exceed one copy per pupil^[34]*

(b) *For academic purposes other than performance, a single copy of an entire performable unit (section, movement, aria, etc.) that is, (1) confirmed by the copyright proprietor to be out of print or (2) unavailable except in a larger work, may be made by or for a teacher solely for the purpose of his or her scholarly research or in preparation to teach a class.*

3. *Printed copies which have been purchased may be edited or simplified provided that the fundamental character of the work is not distorted or the lyrics, if any, altered or lyrics added if none exist.*

4. *A single copy of recordings of performances by students may be made for evaluation or rehearsal purposes and may be retained by the educational institution or individual teacher.*

5. *A single copy of a sound recording (such as a tape, disc or cassette) of copyrighted music may be made from sound recordings owned by an educational^[35] institution or an individual teacher for the purpose of constructing aural exercises or examinations and may be retained by the educational institution or individual teacher. (This pertains only to the copyright of the music itself and not to any copyright which may exist in the sound recording.)*

B. Prohibitions

1. *Copying to create for replace or substitute for anthologies, compilations or collective works.*

2. *Copying of or from works intended to be “consumable” in the course of study or of teaching such as workbooks, exercises, standardized tests and answer sheets and like material.*

3. *Copying for the purpose of performance, except as in A(1) above.*

4. *Copying for the purpose of substituting for the purchase of music, except as in A(1) and A(2) above.*

5. *Copying without inclusion of the copyright notice which appears on the printed copy.*

6. Libraries and Archives

(i) Copying by librarians: articles in periodicals

The librarian of a prescribed library may, if the prescribed conditions are complied with, make and supply a copy of an article in a periodical without infringing any copyright in the text or in any illustrations accompanying the text.

(ii) Copying by librarians: parts of published works

The librarian of a prescribed library may, if the prescribed conditions are complied with, make and supply from a published edition a copy of part of a literary, dramatic or musical work (other than an article in a periodical) without infringing any copyright in the work or in any illustrations accompanying the work.

In both the cases, the prescribed conditions shall include the following:

- (a) that copies are supplied only to persons satisfying the librarian that they require them for the purposes of research for a non-commercial purpose, or private study, and will not use them for any other purpose;
- (b) that no person is furnished with more than one copy of the same article or with copies of more than one article contained in the same issue of a periodical; and
- (c) that persons to whom copies are supplied are required to pay for them a sum not less than the cost (including a contribution to the general expenses of the library) attributable to their production.

7. Public Administration

Copyright is not infringed by anything done for the purposes of parliamentary or judicial proceedings and to the proceedings of statutory inquiries. Where material is open to public inspection pursuant to a statutory requirement, or is on a statutory register, any copyright in the material as a literary work is not infringed by the copying of so much of the material as contains factual information of any description, by or with the authority of the appropriate person.

The justification for these provisions is the general public interest in permitting the copying of works where this is necessary for effective public administration, in circumstances where the rights of the copyright owner are unlikely to be substantially prejudiced.

8. Computer Programs

Directive [2009/24/EC](#) on the legal protection of computer programs attempts to reconcile the copyright laws of the Member States of the EU.

It provides that:

- (i) it is not an infringement of copyright for a lawful user of a copy of a computer program to make any back up copy of it which it is necessary for him to have for the purposes of his lawful use. A person is a lawful user of a computer program if (whether under a licence to do any acts restricted by the copyright in the program or otherwise), he has a right to use the program.
- (ii) it is not an infringement of copyright for a lawful user of a copy of a computer program to decompile a program in order to create an independent compatible program. The fundamental issue at stake is the extent to which designers of computer programs and computer-related products should be entitled to look at and study other programs to enable compatible products

to be produced, particularly through knowledge of the program's interfaces. Without such knowledge, communication between two systems is generally impossible, and thus compatible non-infringing products such as application programs and peripheral devices cannot be developed. The nature of computer programs means that determining the nature of the interfaces will inevitably involve reproducing the program at some stage, since the program will normally only be available in machine code, from which these characteristics will not be apparent. The machine code must first be extracted and converted into a higher level language (i.e., it must be 'decompiled'), a process which would normally involve infringement. Thus, without some form of exception to allow for the decompilation of a program, the copyright owner's monopoly would be extended beyond the boundaries of the 'work' and would include the sole right to produce compatible products.

However, this exception is subject to a number of conditions:

- (a) It is only available to a lawful user.
- (b) The decompilation is necessary in order to obtain the information required to create an independent program which can be operated with the program decompiled or with another program ("the permitted objective"); and
- (c) the information so obtained is not used for any purpose other than the permitted objective.

These conditions will not be satisfied where the information required is readily available to the lawful user or where the user does not confine the decompiling to such acts as are necessary to achieve the permitted objective, nor may the information be supplied to a person who does not require the information for that purpose. Finally, the information must not be used to create a program which is substantially similar in its expression to the program decompiled or to do any act restricted by copyright.

On the contrary, in the United States, the problem of decompilation has been solved not by legislation but by the court's application of the 'fair use' doctrine.

(iii) it is not an infringement of copyright for a lawful user of a copy of a computer program to observe, study or test the functioning of the program in order to determine the ideas and principles which underlie any element of the program if he does so while performing any of the acts of loading, displaying, running, transmitting or storing the program which he is entitled to do.

Further, in respect of all the above provisions, it is irrelevant whether or not there exists any term or condition in an agreement which purports to prohibit or restrict the act.

9. Databases

It is not an infringement of copyright in a database for a person who has a right to use the database or any part of the database, (whether under a licence to do any of the acts restricted by the copyright in the database or otherwise) to do, in the exercise of that right, anything

which is necessary for the purposes of access to and use of the contents of the database or of that part of the database.

10. Miscellaneous provisions

(i) With respect to buildings, sculptures, models for buildings and works of artistic craftsmanship, which are permanently situated in a public place or in premises open to the public, the copyright in such a work is not infringed by making a graphic work representing it, making a photograph or film of it, or by making a broadcast of a visual image of it.

(ii) It is not an infringement of copyright in an artistic work to copy it, or to issue copies to the public, for the purpose of advertising the sale of the work.

(iii) Where the author of an artistic work is not the copyright owner, he does not infringe the copyright by copying the work in making another artistic work, provided he does not repeat or imitate the main design of the earlier work.

(iv) Anything done for the purposes of reconstructing a building does not infringe any copyright in the building, or in any drawings or plans in accordance with which the building was, by or with the licence of the copyright owner, constructed.

(v) The making in domestic premises for private and domestic use of a recording of a broadcast solely for the purpose of enabling it to be viewed or listened to at a more convenient time does not infringe any copyright in the broadcast or in any work included in it. This is known as recording for the purposes of time-shifting. This was to legitimise the state of affairs which existed in the 1980s with respect to the use of domestic videocassette recorders to make recordings of broadcasts.