

The Fair Use/Fair Dealing Handbook

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INTRODUCTION

More than 40 countries with over one-third of the world's population have fair use or fair dealing provisions in their copyright laws. These countries are in all regions of the world and at all levels of development. The broad diffusion of fair use and fair dealing indicates that there is no basis for preventing the more widespread adoption of these doctrines, with the benefits their flexibility brings to authors, publishers, consumers, technology companies, libraries, museums, educational institutions, and governments. This is particularly the case considering that the copyright laws in many "civil law" countries currently allow their courts to apply a specific exception in a specific case only if second and third steps of the Berne three-step-test are met. That is, the court may permit the use only if it determines that the use does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the rights holder. These steps are at least as abstract and difficult to apply as fair use or fair dealing.

Fair dealing was first developed by courts in England in the eighteenth century, and was codified in 1911. In the UK legislation, an exception to infringement was provided for fair dealing with a work for the purposes of "private study, research, criticism, review, or newspaper summary." Fair dealing also became incorporated into copyright laws of the former British Imperial territories, now referred to as the Commonwealth countries. Over the past century, however, the fair dealing statutes have evolved in many of the Commonwealth countries. While in some countries fair dealing remains, as in the UK, restricted to the original purposes of the 1911 Act, in other countries these purposes have become a non-exclusive list of examples (*see, e.g.*, Bahamas). In still other countries, legislatures have added factors a court must consider in determining fair dealing (*see, e.g.*, Australia). Moreover, some countries have replaced the term "fair dealing" with "fair use" (*see, e.g.*, Bangladesh). Thus, the fair dealing statutes in many countries have over time increasingly resembled the fair use statute in the United States. (Additionally, judicial interpretations of fair dealing in countries such as Canada are now similar to judicial interpretations of fair use in the United States.)

Fair use in the United States is attributed to Justice Story's 1841 decision in *Folsom v. Marsh*, which was based on the English fair dealing case law. Congress codified fair use in the Copyright Act of 1976. Section 107 provides that fair use for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship and research is not an infringement of copyright. Section 107 then lists four factors that are to be included in the determination of whether the use made of a work in any particular case is a fair use. In other words, Section 107 sets forth non-exclusive purposes and non-exclusive factors for fair use. Although fair use is generally considered to be more flexible and open-ended than fair dealing, this, as discussed above, is no longer the case in many Commonwealth countries.

Countries that are not former British colonies, such as Taiwan and Korea, have also adopted fair use or fair dealing. Four former colonies, Botswana, Ghana, Lesotho, and Malawi, have replaced fair dealing with other exceptions.

This handbook contains the fair use and fair dealing statutes we were able to identify. Please contact jband@policybandwidth.com if we missed any. The handbook does not include the many implementations of the exceptions for quotations and illustration in Article 10 of the Berne Convention, which refers to "fair practice." Fair practice under Article 10 is a distinct concept from fair use or fair dealing. The handbook also does not include the myriad specific exceptions countries have enacted in addition to fair use or fair dealing. Finally, the handbook does not contain exceptions that appear to be inspired at least in part by fair use or fair dealing, but do not employ those terms.

ANTIGUA AND BARBUDA

The Copyright Act, 2003

PART III – MORAL RIGHTS

Objection to Treatment of Work

Right to object to derogatory treatment of work

15.

(1) Subject to subsections (2) and (3) and to such exceptions as may be specified in or pursuant to any other provision of this Act, the author of a literary dramatic, musical or artistic work that is a protected work and the director of a film that is a protected work have, respectively, the right not to have the work or any part thereof subjected to derogatory treatment, and such right is infringed by any person who does any of the acts specified in section 37 in the circumstances of so specified.

(2) The right does not apply in relation to—

- (a) a computer program or to a computer-generated work;
- (b) Fair dealing with any work made for the purpose of reporting current events....

PART V – INFRINGEMENT OF RIGHTS

Infringement of Moral Rights and Related Rights

Infringement of right to be identified as author or director

36.

(1) Subject to subsection (2), the right conferred by section 14 is infringed by any person who fails to identify the author of a work or the director of a film whenever any action specified in that section occurs in relation to that work or film.

(2) The following acts shall not constitute an infringement of the right conferred by section 14 in relation to a work to the extent that such acts are permitted under Part VI in relation to the work—

- (a) Fair dealing with the work for the purposes of criticism, review or the reporting of current events by means of a sound recording, film, broadcast or cable programme....

PART VI – EXCEPTIONS TO INFRINGEMENT OF COPYRIGHT

General Exceptions

Research and private study

52.

Subject to section 54, fair dealing with a literary, dramatic, musical or artistic work for the purposes of research or private study does not infringe copyright in the work or, in the case of a published edition, in the typographical arrangement.

Criticism, review and reporting

53.

(1) Subject to section 54—

- (a) **Fair dealing** with a protected work for the purposes of criticism or review of that or another work or of a performance of a work; or
 - (b) **Fair dealing** with a protected work (other than a photograph) for the purpose of reporting current events,
- does not infringe copyright in the work so long as it is accompanied by a sufficient acknowledgement.

*Determining **fair dealing***

54.

For the purpose of determining whether an act done in relation to a work constitutes **fair dealing**, the court determining the question shall take account of all factors which appear to it to be relevant, including—

- (a) the nature of the work in question;
- (b) the extent and substantiality of that part of the work affected by the act in relation to the whole of the work;
- (c) the purpose and character of the use; and
- (d) the effect of the act upon the potential market for, or the commercial value of, the work.

PART IX – RIGHTS IN PERFORMANCES

Exceptions to Infringement

***Fair dealing** for criticism, etc.*

116.

Fair dealing with a performance or recording—

- (a) for the purpose of criticism or review of that or another performance or recording, or of a work; or
 - (b) for the purpose of reporting current events,
- does not infringe any of the rights conferred by this Part, and the provisions of section 54 shall, with the necessary modifications, apply in determining whether or not an act constitutes **fair dealing**.

AUSTRALIA

Copyright Act, 1968

DIVISION 3 – ACTS NOT CONSTITUTING INFRINGEMENTS OF COPYRIGHT IN WORKS

Fair dealing for purpose of research or study

40.

(1) A **fair dealing** with a literary, dramatic, musical or artistic work, or with an adaptation of a literary, dramatic or musical work, for the purpose of research or study does not constitute an infringement of the copyright in the work. (1A) A **fair dealing** with a literary work (other than lecture notes) does not constitute an infringement of the copyright in the work if it is for the purpose of, or associated with, an approved course of study or research by an enrolled external student of an educational institution. (1B) In subsection (1A) the expression **lecture notes** means any literary work produced for the purpose of the course of study or research by a person lecturing or teaching in or in connection with the course of study or research.

(2) For the purposes of this Act, the matters to which regard shall be had, in determining whether a dealing with a literary, dramatic, musical or artistic work or with an adaptation of a literary, dramatic or musical work, being a dealing by way of reproducing the whole or a part of the work or adaptation, constitutes a **fair dealing** with the work or adaptation for the purpose of research or study include:

(a) the purpose and character of the dealing;

(b) the nature of the work or adaptation;

(c) the possibility of obtaining the work or adaptation within a reasonable time at an ordinary commercial price;

(d) the effect of the dealing upon the potential market for, or value of, the work or adaptation; and

(e) in a case where part only of the work or adaptation is reproduced—the amount and substantiality of the part copied taken in relation to the whole work or adaptation.

(3) Despite subsection (2), a reproduction, for the purpose of research or study, of all or part of a literary, dramatic or musical work, or of an adaptation of such a work, contained in an article in a periodical publication is taken to be a **fair dealing** with the work or adaptation for the purpose of research or study.

(4) Subsection (3) does not apply if another article in the publication is also reproduced for the purpose of different research or a different course of study.

(5) Despite subsection (2), a reproduction, for the purpose of research or study, of not more than a reasonable portion of a work or adaptation that is described in an item of the table and is not contained in an article in a periodical publication is taken to be a **fair dealing** with the work or adaptation for the purpose of research or study. For this purpose, **reasonable portion** means the amount described in the item.

Fair dealing for purpose of criticism or review

41.

A **fair dealing** with a literary, dramatic, musical or artistic work, or with an adaptation of a literary, dramatic or musical work, does not constitute an infringement of the copyright in the work if it is for the purpose of criticism or review, whether of that work or of another work, and a sufficient acknowledgement of the work is made.

Fair dealing for purpose of parody or satire

41A.

A **fair dealing** with a literary, dramatic, musical or artistic work, or with an adaptation of a literary, dramatic or musical work, does not constitute an infringement of the copyright in the work if it is for the purpose of parody or satire.

Fair dealing for purpose of reporting news

42.

A **fair dealing** with a literary, dramatic, musical or artistic work, or with an adaptation of a literary, dramatic or musical work, does not constitute an infringement of the copyright in the work if:

- (a) it is for the purpose of, or is associated with, the reporting of news in a newspaper, magazine or similar periodical and a sufficient acknowledgement of the work is made; or
 - (b) it is for the purpose of, or is associated with, the reporting of news by means of a communication or in a cinematograph film.
- (2) The playing of a musical work in the course of reporting news by means of a communication or in a cinematograph film is not a **fair dealing** with the work for the purposes of this section if the playing of the work does not form part of the news being reported.

Reproduction for purpose of judicial proceedings or professional advice

43.

- (1) The copyright in a literary, dramatic, musical or artistic work is not infringed by anything done for the purposes of a judicial proceeding or of a report of a judicial proceeding.
- (2) A **fair dealing** with a literary, dramatic, musical or artistic work does not constitute an infringement of the copyright in the work if it is for the purpose of the giving of professional advice by:
 - (a) a legal practitioner; or
 - (b) a person registered as a patent attorney under the *Patents Act 1990*; or
 - (c) a person registered as a trade marks attorney under the *Trade Marks Act 1995*.

DIVISION 6 – INFRINGEMENT OF COPYRIGHT IN SUBJECT MATTER OTHER THAN WORKS

Fair dealing for purpose of criticism or review

103A.

A **fair dealing** with an audio-visual item does not constitute an infringement of the copyright in the item or in any work or other audio-visual item included in the item if it is for the purpose of criticism or review, whether of the first-mentioned audio-visual item, another audio-visual item or a work, and a sufficient acknowledgement of the first-mentioned audio-visual item is made.

Fair dealing for purpose of parody or satire

103AA.

A **fair dealing** with an audio-visual item does not constitute an infringement of the copyright in the item or in any work or other audio-visual item included in the item if it is for the purpose of parody or satire.

Fair dealing for purpose of reporting news

103B.

(1) A **fair dealing** with an audio-visual item does not constitute an infringement of the copyright in the item or in any work or other audio-visual item included in the item if:

- (a) it is for the purpose of, or is associated with, the reporting of news in a newspaper, magazine or similar periodical and a sufficient acknowledgement of the first-mentioned audio-visual item is made;
- (b) it is for the purpose of, or is associated with, the reporting of news by means of a communication or in a cinematograph film.

Fair dealing for purpose of research or study

103C.

(1) A **fair dealing** with an audio-visual item does not constitute an infringement of the copyright in the item or in any work or other audio-visual item included in the item if it is for the purpose of research or study.

(2) For the purposes of this Act, the matters to which regard shall be had in determining whether a dealing with an audio-visual item constitutes a **fair dealing** for the purpose of research or study include:

- (a) the purpose and character of the dealing;
- (b) the nature of the audio-visual item;
- (c) the possibility of obtaining the audio-visual item within a reasonable time at an ordinary commercial price;
- (d) the effect of the dealing upon the potential market for, or value of, the audio-visual item; and
- (e) in a case where part only of the audio-visual item is copied—the amount and substantiality of the part copied taken in relation to the whole item.

PART XIA – PERFORMERS’ PROTECTION

Interpretation

248A.

(1) In this Part: ... *exempt recording* means:

- (aa) an indirect sound recording of a performance, being a recording that is a **fair dealing** with the performance for the purpose of research or study; ...
- (fa) a direct or indirect sound recording of a performance, being a recording that is a **fair dealing** with the performance:
 - (i) for the purpose of criticism or review, whether of that performance or another performance; or
 - (ii) for the purpose of, or associated with, the reporting of news in a newspaper, magazine or similar periodical; or

(iii) for the purpose of, or associated with, the reporting of news by means of a communication or in a cinematograph film....

(1A) For the purposes of paragraph (aa) of the definition of *exempt recording*, in determining whether a recording is a **fair dealing** with a performance for the purpose of research or study, regard must be had to the following matters:

- (a) the purpose and character of the recording;
- (b) the nature of the performance;
- (c) the possibility of obtaining an authorised recording of the performance within a reasonable time at an ordinary commercial price;
- (d) the effect of the recording upon the potential market for, or the value of, authorised recordings of the performance;
- (e) if only part of the performance is recorded—the amount and substantiality of the part recorded when compared to the whole performance.

PART III – MORAL RIGHTS AND RELATED RIGHTS

Objection to Treatment of Work of Visual Art

Right to derogatory treatment of work of visual art

12.

(1) Subject to subsection (3) and to such exceptions as may be specified in or pursuant to any other provision of this Act, the author of a work of visual art that is a protected work, has the right—

(a) to prevent the use of his name as the author of the work of visual art in the event of derogatory treatment;

(b) to prevent any destruction of his work which is of recognised stature;

(c) not to have the work or any part thereof subjected to derogatory treatment, and any such right is infringed by any person who does any of the acts specified in section 46 in the circumstances so specified.

(3) The rights conferred by subsection (1) shall not apply in relation to—

(a) a computer program or to a computer-generated work;

(b) **fair dealing** with any work made for the purposes specified in section 60....

PART VI – INFRINGEMENT OF RIGHTS

Remedies for Copyright Owner

Action owner of copyright

41.

(3) The damages referred to in subsection (2) are as follows—...

(d) the court shall remit statutory damages in any case where an infringer believed that his use of the copyright work was a **fair dealing** under section 60, if the infringer was an employee or agent of a non-profit educational establishment, public library, or Department of Archives acting within the scope of his employment who, or such institution, library, or archives itself which, infringed by reproducing the work in copies or phonorecords.

Infringement of Moral Rights and Related Rights

Infringement of right identified as the author

45.

(1) Subject to subsection (2), the right conferred by section 11 is infringed by any person who fails to identify the author of a work whenever any action specified in that section occurs in relation to that work.

(2) The following acts shall not constitute an infringement of the right conferred by section 11 in relation to a work to the extent that such acts are permitted under Part VII in relation to the work—

- (a) **fair dealing** with the work for the purposes of criticism, review or the reporting of current events....

PART VII – EXCEPTIONS TO INFRINGEMENT OF COPYRIGHT

General Exceptions

Research and private study and teaching

58.

(1) Subject to section 60, **fair dealing** with a copyright work, including such use by reproduction in copies or phonorecords for purposes such as research, private study, scholarship or teaching does not infringe copyright in the work.

(2) For the purposes of subsection (1), teaching shall mean instruction at an educational establishment.

Criticism, review and reporting

59.

(1) Subject to section 60, **fair dealing** with a protected work—

(a) for purposes of criticism, comment, parody or review; or

(b) for the purpose of reporting current events,

does not infringe copyright in the work so long as it is accompanied by sufficient acknowledgement.

(2) No acknowledgement is required in connection with the reporting of current events by means of a sound recording or audiovisual work.

*Determining **fair dealing***

60.

For the purpose of determining whether an act done in relation to a work constitutes **fair dealing**, the court determining the question shall take account of all factors which appear to it to be relevant, including—

(a) the nature of the work in question;

(b) the amount and substantiality of that part of the work affected by the act in relation to the whole of the work;

(c) the purpose and character of the use, including whether such use is of a commercial nature or is for non-profit educational purposes; and

(d) the effect of the act upon the potential market for, or the commercial value of, the work.

PART X – RIGHTS IN LIVE PERFORMANCES

Exceptions to Infringement

Permitted acts in relation to performances

105.

Notwithstanding the rights in performances conferred in this Part, any act done in relation to a copy or phonorecord in circumstances specified hereunder does not constitute an infringement of the rights.

Fair dealing for criticism

106.

Fair dealing with a copy or phonorecord of a performance—

(a) for the purpose of criticism or review of that or another copy or phonorecord of a performance, or of a work; or

(b) for the purpose of reporting current events,

does not infringe any of the rights conferred by this Part, and the provisions of section 60 shall, with the necessary modifications, apply in determining whether or not an act constitutes fair dealing.

BANGLADESH

Copyright Act 2000 No. 28 of 2000

Certain acts not to be infringement of copyright

72.

(1) The following acts shall not constitute an infringement of copyright, namely:

- (a) Fair use of a literary, dramatic, musical or artistic work for the purpose of—
 - (i) private study or private use including research;
 - (ii) criticism or review, whether of that work or of any other work;
- (b) Fair use of a literary, dramatic, musical or artistic work for the purpose of reporting current events—
 - (i) in a newspaper, magazine or similar periodical, or
 - (ii) by broadcast or in a cinematographic work or by means of photograph....

Explanation

The publication of a compilation of addresses or speeches delivered in public is not a fair dealing of such work within the meaning of this clause.

BARBADOS

Copyright Act, Cap. 300

PART II – MORAL RIGHTS AND RELATED RIGHTS

Objection to Treatment of Work

Right to object to derogatory treatment of work

15.

(1) Subject to subsections (2) and (3) and to such exceptions as may be specified in or pursuant to any other provision of this Act, the author of a literary, dramatic, musical or artistic work that is a protected work and the director of a film that is a protected work have, respectively, the right not to have the work or any part thereof subjected to derogatory treatment; and such right is infringed by any person who does any of the acts specified in section 37 in the circumstances so specified.

(2) The right referred to in subsection (1) does not apply in relation to

- (a) a computer programme or to a computer-generated work;
- (b) **fair dealing** with any work made for the purpose of reporting current events.

Infringement of Moral Rights and Related Rights

Infringement of right to be identified as author or director

36.

(1) Subject to subsection (2), the right conferred by section 14 is infringed by any person who fails to identify the author of a work or the director of a film whenever any action specified in that section occurs in relation to that work or film.

(2) The following acts do not constitute an infringement of the right conferred by section 14 in relation to a work to the extent that such acts are permitted under Part V in relation to the work:

- (a) **fair dealing** with the work for the purposes of criticism, review or the reporting of current events by means of a sound recording, film, broadcast or cable programme....

PART V – EXCEPTIONS TO INFRINGEMENT OF COPYRIGHT

General exceptions

51.

Subject to section 53, **fair dealing** with a literary, dramatic, musical or artistic work for the purposes of research or private study does not infringe copyright in the work or, in the case of a published edition, in the typographical arrangement.

Criticism, review and reporting

52.

(1) Subject to section 53,

- (a) **fair dealing** with a protected work for the purposes of criticism or review of that or another work or of a performance of a work; and
 - (b) **fair dealing** with a protected work, other than a photograph, for the purpose of reporting current events,
- does not infringe copyright in the work if it is accompanied by a sufficient acknowledgment.

*Determining **fair dealing***

53.

For the purpose of determining whether an act done in relation to a work constitutes **fair dealing**, the court determining the question shall take account of all factors that appear to it to be relevant, including

- (a) the nature of the work in question;
- (b) the extent and portion of that part of the work affected by the act in relation to the whole of the work;
- (c) the purpose and character of the use; and
- (d) the effect of the act upon the potential market for, or the commercial value of, the work.

PART VIII – RIGHTS IN PERFORMANCE

Exceptions to Infringement

***Fair dealing** criticism etc.*

115.

Fair dealing with a performance or recording

- (a) for the purpose of criticism or review of that or another performance or recording, or of a work; or
 - (b) for the purpose of reporting current events,
- does not infringe any of the rights conferred by this Part, and the provisions of section 53 shall, with the necessary modifications, apply in determining whether or not an act constitutes **fair dealing**.

PART III – MORAL RIGHTS AND RELATED RIGHTS

Objection to Treatment of Work

Right to object to derogatory treatment of work

16.

(1) Subject to the provisions in this Part, and in particular to section 24, the author of a literary, dramatic, musical or artistic work that is a protected work and the director of a film that is a protected work shall have, respectively, the right not to have the work subjected to derogatory treatment; and such right is infringed by any person who does any of the acts specified in section 42 or section 43 in the circumstances there specified.

(3) The right referred to in subsection (1) does not apply in relation to—

- (a) a computer program or to a computer-generated work;
- (b) **fair dealing** with any work made for the purpose of reporting current events....

PART VI – EXCEPTIONS TO INFRINGEMENT OF COPYRIGHT

General Exceptions

Research and private study

56.

(1) Subject to subsection (2) and section 58, **fair dealing** with a protected work for the purposes of research or private study does not infringe copyright in the work.

(2) 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 Regulations under section 66 would not permit to be done under section 67 or 68 (articles or parts of published works; restriction on multiple copies of same material); or
- (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.

Criticism, review and reporting

57.

(1) Subject to section 58, **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 it is accompanied by a sufficient acknowledgement.

(2) Subject to subsection (3) and section 58, **fair dealing** with a protected work (other than a photograph) for the purpose of reporting current events does not infringe copyright in the work so long as it is accompanied by a sufficient acknowledgement.

Determining fair dealing

58.

For the purpose of determining whether an act done in relation to a work constitutes fair dealing, the court determining the question shall take account of all factors which appear to it to be relevant, including—

- (a) the nature of the work in question;
- (b) the extent and substantiality of that part of the work affected by the act in relation to the whole of the work;
- (c) the effect of the act upon the potential market for, or the commercial value of, the work; and
- (d) the purpose and character of the use.

PART VIII – RIGHTS IN PERFORMANCES

Exceptions to Infringement of Rights Conferred under this Part

Fair dealing for criticism, etc.

124.

Fair dealing with a performance or recording—

- (a) for the purpose of criticism or review, of that or another performance or recording, or of a work; or
 - (b) for the purpose of reporting current events,
- does not infringe any of the rights conferred by this Part, and the provisions of section 58 shall, with the necessary modifications, apply in determining whether or not an act constitutes fair dealing.

CHAPTER III – ACTS PERMITTED IN RELATION TO COPYRIGHT WORKS

General

Research and private study

33.

(1) Fair dealing with a literary, dramatic, musical or artistic work for the purpose of research or private study does not infringe any copyright in the work or, in the case of a published edition, in the typographical arrangement.

(2) Fair dealing with the typographical arrangement of a published edition for the purpose mentioned in subsection (1) does not infringe any copyright in the arrangement.

(3) 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 regulations under section 44 would not permit to be done under sections 42 or 43; or

(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.

Criticism, reviews and news reporting

34.

(1) 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.

(2) 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, subject to subsection (3), it is accompanied by a sufficient acknowledgement.

(3) No acknowledgement is required in connection with the reporting of current events by means of a sound recording, film, broadcast or cable programme.

CANADA

Copyright Act (R.S.C., 1985, c. C-42)

PART III – INFRINGEMENT OF COPYRIGHT AND MORAL RIGHTS AND EXCEPTIONS TO INFRINGEMENT

Exceptions

Fair dealing

Research, private study, etc.

29.

Fair dealing for the purpose of research, private study, education, parody or satire does not infringe copyright.

Criticism or review

29.1

Fair dealing for the purpose of criticism or review does not infringe copyright if the following are mentioned:

- (a) the source; and
- (b) if given in the source, the name of the
 - (i) author, in the case of a work,
 - (ii) performer, in the case of a performer's performance,
 - (iii) maker, in the case of a sound recording, or
 - (iv) broadcaster, in the case of a communication signal.

News reporting

29.2

Fair dealing for the purpose of news reporting does not infringe copyright if the following are mentioned:

- (a) the source; and
- (b) if given in the source, the name of the
 - (i) author, in the case of a work,
 - (ii) performer, in the case of a performer's performance,
 - (iii) maker, in the case of a sound recording, or
 - (iv) broadcaster, in the case of a communication signal.

Nature of copyright in literary, musical or artistic works and cinematograph films

7.

(1) Copyright in a scientific, literary, musical or artistic work or a cinematograph film or photograph shall consist in the exclusive right to control the doing in the Republic of any of the following acts: the reproduction in any form, sale, rental, distribution, lending, advertising, exhibiting in public, the communication to the public, the broadcasting, the translation, adaptation and any other arrangement, of the whole work or a substantial part thereof:

Provided that copyright in any such work shall not include the right to control—

(a) the doing of any of the aforesaid acts by way of **fair dealing** for purposes of research, private use, criticism or review, or the reporting of current events, on condition that, if such use is made in public, it shall be accompanied by an acknowledgement of the title of the work and its authorship, except where the work is incidentally included in a broadcast....

PART I – WORKS PROTECTED

Expression of folklore protected

8.

(1) Expression of folklore is protected by copyright under this Act against

- (a) reproduction;
- (b) communication to the public by performance, broadcasting, distribution by cable or other means; and
- (c) adaptation, translation and other transformation, when the expression is made either for commercial purposes or outside a traditional or customary context.

(2) The protection conferred in subsection (1) does not include the right to control

- (a) the doing of any of the acts by way of **fair dealing** for private and domestic use, subject to the condition that, if the use is public, it shall be accompanied by an acknowledgement of the title of the work and its source...

Programme-carrying signals

14.

Copyright in programme-carrying signals is the exclusive right to prevent the distribution in The Gambia or from The Gambia of any signals by any distributor for whom those signals were not intended by their author, but it is not an infringement of the right of the author,

- (a) the reproduction in any material form, the communication to the public or the broadcasting of the whole signal or a substantial part of it, either in its original form or in any form recognisably derived from the original by way of **fair dealing** for the purpose of scientific research, private use, criticism or review or the reporting of current events....

PART VI – EXCEPTIONS

Acts which do not constitute infringement

34.

(2) The following acts do not constitute an infringement of copyright or neighbouring rights:

(a) **fair dealing** with a protected work, production, performance or edition for purposes of research or private study;

(b) **fair dealing** with a protected work, production, performance or edition for purposes of criticism or review, whether of that or any other work, production, performance or edition, and accompanied by a sufficient acknowledgement;

(c) **fair dealing** with a protected work, production, performance or edition for the purpose of reporting current events

(i) in a newspaper, magazine or similar periodical, if accompanied by a sufficient acknowledgement; or

(ii) by broadcasting, by communication by cable or by the use of an audio-visual production;

(4) For the purpose of determining whether an act in relation to a protected work, production, performance or edition constitutes **fair dealing**, a court determining the question shall take account of all factors which appear to it to be relevant, including—

(a) the nature of the work, production, performance or edition in question;

(b) the purpose and character of the act, and in particular whether the act is of a commercial nature;

(c) the extent and substantiality of that part of the work, production, performance or edition affected by the act in relation to the whole of the work, production, performance or edition;

(d) the effect of the act upon the potential market for, or the commercial value of, the work, production, performance or edition.

PART I – COPYRIGHT IN ORIGINAL WORK

General exceptions from protection of literary, dramatic and musical works

6.

- (1) No **fair dealing** with a literary, dramatic or musical general work for purposes of research or private study shall constitute an infringement of the copyright in the work.
- (2) No **fair dealing** with a literary, dramatic or musical work shall constitute an infringement of the copyright in the work if it is for purposes of criticism or review, whether of that work or of another work, and is accompanied by a sufficient acknowledgment.
- (3) No **fair dealing** with a literary, dramatic or musical work shall constitute an infringement of the copyright in the work if it is for the purpose of reporting current events
 - (a) in a newspaper, magazine or similar periodical, or
 - (b) by means of broadcasting, or in a cinematograph film, and, in a case falling within paragraph (a) of this subsection, is accompanied by a sufficient acknowledgment.

General exceptions from protection of artistic works

9.

- (1) No **fair dealing** with an artistic work for purposes of research or private study shall constitute an infringement of the copyright in the work.
- (2) No **fair dealing** with an artistic work shall constitute an infringement of the copyright in the work if it is for purposes of criticism or review, whether of that work or of another work, and is accompanied by a sufficient acknowledgment.

PART II – ACTS PERMITTED IN RELATION TO COPYRIGHT WORKS

General

Research and private study

38.

- (1) Fair dealing with a work for the purposes of research or private study does not infringe any copyright in the work or, in the case of a published edition, in the typographical arrangement.
- (2) 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 regulations under section 49 would not permit to be done under section 47 or 48 (articles or parts of published works: restriction on multiple copies of same material); or
 - (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.
- (3) In determining whether any dealing with a work is fair dealing under subsection (1), the court shall take into account all the circumstances of the case and, in particular—
- (a) the purpose and nature of the dealing, including whether the dealing is for a non-profit-making purpose and whether the dealing is of a commercial nature;
 - (b) the nature of the work;
 - (c) the amount and substantiality of the portion dealt with in relation to the work as a whole; and
 - (d) the effect of the dealing on the potential market for or value of the work.

Criticism, review and news reporting

39.

- (1) Fair dealing with a work for the purpose of criticism or review, of that or another work or of a performance of a work, if it is accompanied by a sufficient acknowledgement, does not infringe any copyright in the work or, in the case of a published edition, in the typographical arrangement.
- (2) Fair dealing with a work for the purpose of reporting current events, if (subject to subsection three) it is accompanied by a sufficient acknowledgement, does not infringe any copyright in the work.
- (3) No acknowledgement is required in connection with the reporting of current events by means of a sound recording, film, broadcast or cable programme.

Fair Dealing for Purposes of Giving or Receiving Instruction

Education

41A.

- (1) Fair dealing with a work by or on behalf of a teacher or by a pupil for the purposes of giving or receiving instruction in a specified course of study provided by an educational establishment does not infringe the copyright in the work or, in the case of a published edition, in the typographical arrangement.

- (2) In determining whether any dealing with a work is **fair dealing** under subsection (1), the court shall take into account all the circumstances of the case and, in particular—
- (a) the purpose and nature of the dealing, including whether the dealing is for a non-profit-making purpose and whether the dealing is of a commercial nature;
 - (b) the nature of the work;
 - (c) the amount and substantiality of the portion dealt with in relation to the work as a whole; and
 - (d) the effect of the dealing on the potential market for or value of the work.
- (3) Where any dealing with a work involves the inclusion of any passage or excerpt from a published literary or dramatic work in an anthology—
- (a) if the inclusion is not accompanied by a sufficient acknowledgement, the dealing is not **fair dealing** under subsection (1); and
 - (b) if the inclusion is accompanied by a sufficient acknowledgement, subsection (2) applies in determining whether the dealing is **fair dealing** under subsection (1).
- (4) Where any dealing with a work involves the making of a recording of a broadcast or cable programme or a copy of such a recording—
- (a) if an acknowledgement of authorship or other creative effort contained in the work recorded is not incorporated in the recording, the dealing is not **fair dealing** under subsection (1); and
 - (b) if an acknowledgement of authorship or other creative effort contained in the work recorded is incorporated in the recording, subsection (2) applies in determining whether the dealing is **fair dealing** under subsection (1).
- (5) Where any dealing with a work involves the making available of copies of the work through a wire or wireless network wholly or partly controlled by an educational establishment—
- (a) if the educational establishment fails to—
 - (i) adopt technological measures to restrict access to the copies of the work through the network so that the copies of the work are made available only to persons who need to use the copies of the work for the purposes of giving or receiving instruction in the specified course of study in question or for the purposes of maintaining or managing the network; or
 - (ii) ensure that the copies of the work are not stored in the network for a period longer than is necessary for the purposes of giving or receiving instruction in the specified course of study in question or, in any event, for a period longer than 12 consecutive months, the dealing is not **fair dealing** under subsection (1); and
 - (b) if the educational establishment—
 - (i) adopts technological measures to restrict access to the copies of the work through the network so that the copies of the work are made available only to persons who need to use the copies of the work for the purposes of giving or receiving instruction in the specified course of study in question or for the purposes of maintaining or managing the network; and
 - (ii) ensures that the copies of the work are not stored in the network for a period longer than is necessary for the purposes of giving or receiving instruction in the specified course of study in question or, in any event, for a period longer than 12 consecutive months, subsection (2) applies in determining whether the dealing is **fair dealing** under subsection (1).
- (6) Without affecting the generality of section 37(5), where any dealing with a work involves the making of reprographic copies, the fact that the making of the copies does not fall within section 45 does not mean that it is not covered by this section, and subsection (2) applies in determining whether the dealing is **fair dealing** under subsection (1).
- (7) Where a copy which apart from this section would be an infringing copy is made in accordance with this section but is subsequently dealt with, it is to be treated as an infringing copy—
- (a) for the purpose of that dealing; and
 - (b) if that dealing infringes copyright, for all subsequent purposes.
- (8) In subsection (7), "dealt with" (被用以進行交易) means sold, let for hire, or offered or exposed for sale or hire.

Fair Dealing for Purposes of Public Administration

Public administration

54A.

- (1) Fair dealing with a work by the Government, the Executive Council, the Judiciary or any District Council for the purposes of efficient administration of urgent business does not infringe the copyright in the work or, in the case of a published edition, in the typographical arrangement.
- (2) In determining whether any dealing with a work is fair dealing under subsection (1), the court shall take into account all the circumstances of the case and, in particular—
- (a) the purpose and nature of the dealing, including whether the dealing is for a non-profit-making purpose and whether the dealing is of a commercial nature;
 - (b) the nature of the work;
 - (c) the amount and substantiality of the portion dealt with in relation to the work as a whole; and
 - (d) the effect of the dealing on the potential market for or value of the work.
- (3) Where a copy which apart from this section would be an infringing copy is made in accordance with this section but is subsequently dealt with, it is to be treated as an infringing copy—
- (a) for the purpose of that dealing; and
 - (b) if that dealing infringes copyright, for all subsequent purposes.
- (4) In subsection (3), "dealt with" (被用以進行交易) means sold, let for hire, or offered or exposed for sale or hire.

Exceptions to right

91.

- (1) The right conferred by section 89 (right to be identified as author or director) is subject to the following exceptions.
- (4) The right is not infringed by an act which by virtue of any of the following provisions would not infringe copyright in the work—
- (a) section 39 (fair dealing for certain purposes), so far as it relates to the reporting of current events by means of a sound recording, film, broadcast or cable programme....

Criticism, review and news reporting

241.

- (1) Fair dealing with a performance or fixation—
- (a) for the purpose of criticism or review, of that or another performance or fixation, or of a work; or
 - (b) for the purpose of reporting current events,
- does not infringe any of the rights conferred by this Part.

Fair dealing for purposes of giving or receiving instruction

242A.

- (1) Fair dealing with a performance or fixation by or on behalf of a teacher or by a pupil for the purposes of giving or receiving instruction in a specified course of study provided by an educational establishment does not infringe any of the rights conferred by this Part.
- (2) In determining whether any dealing with a performance or fixation is fair dealing under subsection (1), the court shall take into account all the circumstances of the case and, in particular—

- (a) the purpose and nature of the dealing, including whether the dealing is for a non-profit-making purpose and whether the dealing is of a commercial nature;
 - (b) the nature of the performance or fixation;
 - (c) the amount and substantiality of the portion dealt with in relation to the performance or fixation as a whole; and
 - (d) the effect of the dealing on the potential market for or value of the performance or fixation.
- (3)** Where a fixation which apart from this section would be an infringing fixation is made in accordance with this section but is subsequently dealt with, it is to be treated as an infringing fixation—
- (a) for the purpose of that dealing; and
 - (b) if that dealing infringes any of the rights conferred by this Part, for all subsequent purposes.
- (4)** Where any dealing with a fixation involves the making available of copies of the fixation through a wire or wireless network wholly or partly controlled by an educational establishment—
- (a) if the educational establishment fails to—
 - (i) adopt technological measures to restrict access to the copies of the fixation through the network so that the copies of the fixation are made available only to persons who need to use the copies of the fixation for the purposes of giving or receiving instruction in the specified course of study in question or for the purposes of maintaining or managing the network; or
 - (ii) ensure that the copies of the fixation are not stored in the network for a period longer than is necessary for the purposes of giving or receiving instruction in the specified course of study in question or, in any event, for a period longer than 12 consecutive months, the dealing is not **fair dealing** under subsection (1); and
 - (b) if the educational establishment—
 - (i) adopts technological measures to restrict access to the copies of the fixation through the network so that the copies of the fixation are made available only to persons who need to use the copies of the fixation for the purposes of giving or receiving instruction in the specified course of study in question or for the purposes of maintaining or managing the network; and
 - (ii) ensures that the copies of the fixation are not stored in the network for a period longer than is necessary for the purposes of giving or receiving instruction in the specified course of study in question or, in any event, for a period longer than 12 consecutive months, subsection (2) applies in determining whether the dealing is **fair dealing** under subsection (1).

***Fair dealing** for purposes of public administration*

246 A.

- (1)** **Fair dealing** with a performance or fixation by the Government, the Executive Council, the Judiciary or any District Council for the purposes of efficient administration of urgent business does not infringe any of the rights conferred by this Part.
- (2)** In determining whether any dealing with a performance or fixation is **fair dealing** under subsection (1), the court shall take into account all the circumstances of the case and, in particular—
 - (a) the purpose and nature of the dealing, including whether the dealing is for a non-profit-making purpose and whether the dealing is of a commercial nature;
 - (b) the nature of the performance or fixation;
 - (c) the amount and substantiality of the portion dealt with in relation to the performance or fixation as a whole; and
 - (d) the effect of the dealing on the potential market for or value of the performance or fixation.
- (3)** Where a fixation which apart from this section would be an infringing fixation is made in accordance with this section but is subsequently dealt with, it is to be treated as an infringing fixation—

- (a) for the purpose of that dealing; and
- (b) if that dealing infringes any of the rights conferred by this Part, for all subsequent purposes.

Exceptions to right under section 272B

272D.

- (1) The right conferred by section 272B (right to be identified as performer) does not apply where it is not reasonably practicable to identify the performer.
- (4) The right is not infringed by an act which by virtue of any of the following provisions would not infringe any right conferred by Part III—
 - (a) section 241 (fair dealing for certain purposes), insofar as it relates to the reporting of current events by means of a sound recording, broadcast or cable programme....

CHAPTER VIII – RIGHTS OF BROADCASTING ORGANISATION AND OF PERFORMERS

Acts not infringing broadcast reproduction right or performer's right

39.

No broadcast reproduction right or performer's right shall be deemed to be infringed by—

- (a) the making of any sound recording or visual recording for the private use of the person making such recording, or solely for purposes of bona fide teaching or research; or
- (b) the use, consistent with **fair dealing**, of excerpts of a performance or of a broadcast in the reporting of current events or for bona fide review, teaching or research; or
- (c) such other acts, with any necessary adaptations and modifications, which do not constitute infringement of copyright under section 52.

CHAPTER XI – INFRINGEMENT OF COPYRIGHT

Certain acts not to be infringement of copyright

52.

(1) The following acts shall not constitute an infringement of copyright, namely:

- (a) a **fair dealing** with a literary, dramatic, musical or artistic work, not being a computer programme, for the purposes of—
 - (i) private use, including research;
 - (ii) criticism or review, whether of that work or of any other work;
 - (aa) the making of copies or adaptation of a computer programme by the lawful possessor of a copy of such computer programme, from such copy—
 - (i) in order to utilise the computer programme for the purpose for which it was supplied; or
 - (ii) to make back-up copies purely as a temporary protection against loss, destruction or damage in order only to utilise the computer programme for the purpose for which it was supplied;
 - (ab) the doing of any act necessary to obtain information essential for operating interoperability of an independently created computer programme with other programmes by a lawful possessor of a computer programme provided that such information is not otherwise readily available;
 - (ac) the observation, study or test of functioning of the computer programme in order to determine the ideas and principles which underline any elements of the programme while performing such acts necessary for the functions for which the computer programme was supplied;
 - (ad) the making of copies or adaptation of the computer programme from a personally legally obtained copy for non-commercial personal use;
- (b) a **fair dealing** with a literary, dramatic, musical or artistic work for the purpose of reporting current events—
 - (i) in a newspaper, magazine or similar periodical, or
 - (ii) by broadcast or in a cinematograph film or by means of photographs.

CHAPTER 6 – ACTS PERMITTED IN RELATION TO WORKS PROTECTED BY COPYRIGHT

Fair Dealing: research or private study

50.

- (1) **Fair dealing** with a literary, dramatic, musical or artistic work, sound recording, film, broadcast, cable programme, or non-electronic original database, for the purposes of research or private study, shall not infringe any copyright in the work.
- (2) **Fair dealing** with a typographical arrangement of a published edition for the purposes of research or private study shall not infringe any copyright in the arrangement.
- (3) The copying by a person, other than the researcher or private student, is not **fair dealing** where—
 - (a) in the case of a librarian or archivist, he or she does anything which is not permitted under section 63, or
 - (b) in any other case, the person copying knows or has reason to believe that the copying will result in copies of substantially the same material being provided to more than one person at approximately the same time and for substantially the same purpose.
- (4) In this Part, “**fair dealing**” means the making use of a literary, dramatic, musical or artistic work, film, sound recording, broadcast, cable programme, non-electronic original database or typographical arrangement of a published edition which has already been lawfully made available to the public, for a purpose and to an extent which will not unreasonably prejudice the interests of the owner of the copyright.
- (5) In this Part, the following acts are not **fair dealing**—
 - (a) converting a computer program expressed in a low level computer language into a version expressed in a higher level computer language, or
 - (b) copying a computer program in an incidental manner in the course of converting that program.

Fair dealing: criticism or review

51.

- (1) **Fair dealing** with a work for the purposes of criticism or review of that or another work or of a performance of a work shall not infringe any copyright in the work where the criticism or review is accompanied by a sufficient acknowledgement.
- (2) **Fair dealing** with a work (other than a photograph) for the purpose of reporting current events shall not infringe copyright in that work, where the report is accompanied by a sufficient acknowledgement.
- (3) In this Part, “sufficient acknowledgement” means an acknowledgement identifying the work concerned by its title or other description and identifying the author unless—
 - (a) in the case of a work which has been lawfully made available to the public, it was so made available anonymously, or
 - (b) in the case of a work which has not been made available to the public, it is not possible for a person without previous knowledge of the facts to ascertain the identity of the author of the work by reasonable enquiry.

CHAPTER 4 – ACTS PERMITTED IN RELATION TO PERFORMANCES

Exemptions in respect to performances

221.

(1) **Fair dealing** with a performance or recording for the purposes of criticism or review, of that or another recording, or of a work, or for the purpose of reporting current events, shall not infringe any of the rights conferred by this Part.

(2) In this Part “**fair dealing**” means the making use of a performance or a recording which has been lawfully made available to the public for a purpose and to an extent which will not unreasonably prejudice the interests of the rightsowner.

CHAPTER 8 – ACTS PERMITTED IN RESPECT OF DATABASE RIGHT

Fair dealing: *research and private study*

329.

(1) The database right in a non-electronic database which has been re-utilised is not infringed by **fair dealing** with a substantial part of its contents by a lawful user of the database where that part is extracted for the purposes of research or private study.

(2) For the purposes of this Part “**fair dealing**” means the extraction of the contents of a database by a lawful user to an extent which will not unreasonably prejudice the interests of the rights owner.

Education

Exemption for educational establishments

330.

(1) The database right in a database is not infringed by **fair dealing** with a substantial part of its contents by a lawful user of the database where that part is extracted for the purposes of illustration in the course of instruction or of preparation for instruction and where—

- (a) the extraction is done by or on behalf of a person giving or receiving instruction, and
- (b) the source is indicated.

(2) For the purposes of this section “lawful user” includes an educational establishment.

Fair Use

19.

- (a) Fair use of a work is permitted for purposes such as: private study, research, criticism, review, journalistic reporting, quotation, or instruction and examination by an educational institution. (b) In determining whether a use made of a work is fair within the meaning of this section the factors to be considered shall include, inter alia, all of the following:
- (1) The purpose and character of the use;
 - (2) The character of the work used;
 - (3) The scope of the use, quantitatively and qualitatively, in relation to the work as a whole;
 - (4) The impact of the use on the value of the work and its potential market. (c) The Minister may make regulations prescribing conditions under which a use shall be deemed a fair use.

The Copyright Act, 1993

PART III – MORAL RIGHTS AND RELATED RIGHTS

Objection to Treatment of Work

Right to object to derogatory treatment of work

15.

(1) Subject to subsections (2) and (3) and to such exceptions as may be specified in or pursuant to any other provision of this Act, the author of a literary, dramatic, musical or artistic work that is a protected work and the director of a film that is a protected work have, respectively, the right not to have the work or any part thereof subjected to derogatory treatment; and such right is infringed by any person who does any of the acts specified in section 37 in the circumstances so specified.

(2) The right does not apply in relation to—

- (a) a computer program or to a computer-generated work;
- (b) **fair dealing** with any work made for the purpose of reporting current events....

PART V – INFRINGEMENT OF RIGHTS

Infringement of Moral Rights and Related Rights

Infringements of right to be identified as author or director

36.

(1) Subject to subsection (2), the right conferred by section 14 is infringed by any person who fails to identify the author of a work or the director of a film whenever any action specified in that section occurs in relation to that work or film.

(2) The following acts shall not constitute an infringement of the right conferred by section 14 in relation to a work to the extent that such acts are permitted under Part VI in relation to the work—

- (a) **fair dealing** with the work for the purposes of criticism, review or the reporting of current events by means of a sound recording, film, broadcast or cable programme....

PART VI – EXCEPTIONS TO INFRINGEMENT OF COPYRIGHT

General Exceptions

Research and private study

52.

Subject to section 54, **fair dealing** with a literary, dramatic, musical or artistic work for the purposes of research or private study does not infringe copyright in the work or, in the case of a published edition, in the typographical arrangement.

Criticism, review and reporting

53.

(1) Subject to section 54—

(a) **fair dealing** with a protected work for the purposes of criticism or review of that or another work or of a performance of a work; and

(b) **fair dealing** with a protected work (other than a photograph) for the purpose of reporting current events,

does not infringe copyright in the work so long as it is accompanied by a sufficient acknowledgement.

(2) No acknowledgement is required in connection with the reporting of current events by means of a sound recording, film, broadcast or cable programme.

*Determining **fair dealing***

54.

For the purpose of determining whether an act done in relation to a work constitutes **fair dealing**, the court determining the question shall take account of all factors which appear to it to be relevant, including—

(a) the nature of the work in question;

(b) the extent and substantiality of that part of the work affected by the act in relation to the whole of the work;

(c) the purpose and character of the use; and

(d) the effect of the act upon the potential market for, or the commercial value of, the work.

PART IX – RIGHTS IN PERFORMANCES

Exceptions to Infringement

***Fair dealing** for criticism, etc.*

116.

Fair dealing with a performance or recording—

(a) for the purpose of criticism or review of that or another performance or recording, or of a work; or

(b) for the purpose of reporting current events,

does not infringe any of the rights conferred by this Part, and the provisions of section 54 shall, with the necessary modifications, apply in determining whether or not an act constitutes **fair dealing**.

PART III – COPYRIGHT AND OTHER RELATED RIGHTS

Nature of copyright in literary, musical or artistic works and audio-visual works

26.

(1) Copyright in a literary, musical or artistic work or audio-visual work shall be the exclusive right to control the doing in Kenya of any of the following acts, namely the reproduction in any material form of the original work or its translation or adaptation, the distribution to the public of the work by way of sale, rental, lease, hire, loan, importation or similar arrangement, and the communication to the public and the broadcasting of the whole work or a substantial part thereof, either in its original form or in any form recognisably derived from the original; but copyright in any such work shall not include the right to control—

(a) the doing of any of those acts by way of **fair dealing** for the purposes of scientific research, private use, criticism or review, or the reporting of current events subject to acknowledgement of the source.

(3) Copyright of a computer program shall not constitute **fair dealing** for the purposes of paragraph (a) of subsection (1). ...

KIRIBATI

Copyright Ordinance (Cap 16)

Kiribati applies the Copyright Act 1956 of England (*see* United Kingdom, *infra*).¹

¹ <http://www.wipo.int/wipolex/en/details.jsp?id=11424>

KOREA

Framework Act on Intellectual Property

CHAPTER I – GENERAL PROVISIONS

Article 2 (basic principles)

The Government shall promote policies related to intellectual property according to the following basic principles:

1. To promote the creation of excellent intellectual property by encouraging creators of intellectual property, such as writers, inventors, technicians, and artists to engage in their activities creatively and stably;
2. To protect intellectual property in an effective and stable manner, promote the utilization and the reasonable and **fair use** thereof;
3. To build up foundations to promote the creation, protection and utilization of intellectual property by promoting the social environment that values intellectual property and fostering professional human resources and related industries;
4. To contribute to the common development of the international community by bringing harmony between domestic norms and international norms on intellectual property and supporting the strengthening of intellectual property-related aptitude of developing countries.

CHAPTER II – FORMULATION OF POLICIES FOR INTELLECTUAL PROPERTY AND PROMOTION SYSTEM THEREOF

Article 8 (formulation of master plan for national intellectual property)

- (1) The Government shall, every five years, formulate a master plan for national intellectual property that defines the objectives of and basic direction-setting for mid-term and long-term policies concerning intellectual property (hereinafter referred to as "master plan") in order to achieve the objectives of this Act in an efficient manner.
- (2) Where the Government intends to formulate or change a master plan, it shall confirm the master plan after deliberation by the Council and announce the same officially without delay: Provided, That this shall not apply to cases where the Government intends to change insignificant matters prescribed by Presidential Decree.
- (3) A master plan shall include the following matters:
 1. The objectives of and basic direction-setting for policies for intellectual property;
 2. Strategies for the creation, protection and utilization of intellectual property and new intellectual property;
 3. A plan for strengthening abilities of industrial circles, academic circles, research circles, cultural and artistic circles, etc. to create intellectual property;
 4. Matters concerning the protection of intellectual property of nationals of the Republic of Korea in foreign countries (including corporations or organizations established in accordance with the law of the Republic of Korea; hereinafter the same shall apply);
 5. A plan for preventing danger and harm to the security of the people, etc. due to an infringement on intellectual property;
 6. A plan for the **fair use** of intellectual property;

SECTION 3 – PROMOTION OF UTILIZATION OF INTELLECTUAL PROPERTY

*Article 28 (establishment of order in **fair use** of intellectual property)*

- (1) The Government shall endeavor to promote the **fair use** of intellectual property and to prevent any abuse of intellectual property rights.
- (2) The Government shall take necessary measures so that intellectual property created by joint efforts may be distributed fairly among the persons concerned.
- (3) The Government shall prevent unfair transactions of intellectual property between large companies and small and medium enterprises, and promote mutual cooperation.

Copyright Act, 2011

***Fair use** of works²*

35–3.

- (1) Other than the cases stipulated from Article 23 to Article 35–2, Article 101–3 to Article 101–5 it shall be permissible to use works for purposes such as news reporting, criticism, education, or research which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder.
- (2) The following four factors must be considered in determining whether a particular use is fair:
 1. the purpose and character of the use, including whether such use is of commercial nature or is for nonprofit purposes;
 2. the nature of the copyrighted work;
 3. 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 actual and potential market or value of the copyrighted work.

² Unofficial translation. The phrase “other than” in subsection (1) probably means “in addition to.” Adopted on December 2, 2011.

LIBERIA

Copyright Law, 1997

Limitation of exclusive rights: fair use

2.7.

Notwithstanding the provisions of Section 2.6, the Fair use of a copyright work, including such use by reproduction in copies or sound recordings 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:

- (a) the purpose and character of the use, including whether such use is of a commercial nature or is for non-profit educational purposes;
- (b) the nature of the copyright work;
- (c) the amount and substantially of the portion used In relation to the copyrighted work as a whole; and
- (d) the effect of the use upon the potential market for or value of the work.

This Section does not include the reproduction of a computer program which is provided for in Section 2.14.

MALAYSIA

Copyright Act, 2012

PART II – GENERAL PROVISIONS

Copyright in published editions of works

9.

(4) Reproduction of the typographical arrangement of a published edition for the purposes of research, private study, criticism, review or the reporting of current events does not infringe the copyright subsisting by virtue of this section if such reproduction is compatible with **fair dealing**: Provided that if such reproduction is made public it is accompanied by an acknowledgement of the title of the work and its authorship, except where the work is incidentally included in a broadcast.

(6) The Government, the National Archives, or any State Archives, the National Library, or any State library, or any public libraries and educational, scientific or professional institutions as the Minister may by order prescribe, may reproduce the typographical arrangement of a published edition without infringing the copyright subsisting by virtue of this section if such reproduction is in the public interest and is compatible with **fair dealing** and the provisions of any regulations.

PART III – NATURE AND DURATION OF COPYRIGHT

Nature of copyright in literary, musical or artistic works, films and sound recordings

13.

(2) Notwithstanding subsection (1), the right of control under that subsection does not include the right to control

(a) the doing of any of the acts referred to in subsection (1) by way of **fair dealing** including for purposes of research, private study, criticism, review or the reporting of news or current events: Provided that it is accompanied by an acknowledgement of the title of the work and its authorship, except that no acknowledgment is required in connection with the reporting of news or current events by means of a sound recording, film or broadcast;

(2a) For the purposes of paragraph (2)(a), in determining whether a dealing constitutes a **fair dealing**, the factors to be considered shall include:

(a) the purpose and character of the dealing, including whether such dealing is of a commercial nature or is for non-profit educational purposes;

(b) the nature of the copyright work;

(c) the amount and substantiality of the portion used in relation to the copyright work as a whole; and

(d) the effect of the dealing upon the potential market for or value of the copyright work.

MYANMAR

The Burma Copyright Act

Rights

2.

(1) Copyright in a work shall be deemed to be infringed by any person who, without the consent of the owner of the copyright, does anything the sole right to do which is by this Act conferred on the owner of the copyright:

Provided that the following acts shall not constitute an infringement of copyright:

(i) Any **fair dealing** with any work for the purposes of private study, research, criticism, review, or newspaper summary....

NAMIBIA

Copyrights and Neighboring Rights Protection Act 6 of 1994

PART I – PROTECTION OF COPYRIGHT

General exceptions regarding protection of literary and musical works

15.

(1) Copyright shall not be infringed by a **fair dealing** in the use of a literary or musical work—

(a) for the purpose of research or private study by, or the personal or private use of, the person using the work;

(b) for the purpose of criticism or review of the work or of another work; or

(c) for the purpose of reporting on a current event—

(i) in a newspaper, magazine or similar periodical; or

(ii) by means of broadcasting or in a cinematograph film, provided, in the case of paragraphs (b)

and (c)(i), the source and the name of the author, if that name appears on the work, are mentioned.

NAURU

Custom and Adopted Laws Act 1971

Nauru applies the 1956 Copyright Act of England (see United Kingdom *infra*).³

³ <http://www.wipo.int/wipolex/en/details.jsp?id=8033>

PART 3 – ACTS PERMITTED IN RELATION TO COPYRIGHT WORKS

Criticism, review, and news reporting

42.

- (1) Fair dealing with a work for the purposes of criticism or review, of that or another work or of a performance of a work, does not infringe copyright in the work if such fair dealing is accompanied by a sufficient acknowledgement.
- (2) Fair dealing with a work for the purposes of reporting current events by means of a sound recording, film, broadcast, or cable programme does not infringe copyright in the work.
- (3) Fair dealing with a work (other than a photograph) for the purposes of reporting current events by any means other than those referred to in subsection (2) of this section does not infringe copyright in the work if such fair dealing is accompanied by a sufficient acknowledgement.

Research or private study

43.

- (1) Fair dealing with a work for the purposes of research or private study does not infringe copyright in the work.
- (2) For the avoidance of doubt, it is hereby declared that fair dealing with a published edition for the purposes of research or private study does not infringe copyright in either the typographical arrangement of the edition or any literary, dramatic, musical, or artistic work or part of a work in the edition.
- (3) In determining, for the purposes of subsection (1) of this section, whether copying, by means of a reprographic process or by any other means, constitutes fair dealing for the purposes of research or private study, a court shall have regard to—
 - (a) The purpose of the copying; and
 - (b) The nature of the work copied; and
 - (c) Whether the work could have been obtained within a reasonable time at an ordinary commercial price; and
 - (d) The effect of the copying on the potential market for, or value of, the work; and
 - (e) Where part of a work is copied, the amount and substantiality of the part copied taken in relation to the whole work.
- (7) This section does not authorise the making of more than 1 copy of the same work, or the same part of a work, on any one occasion, but in this subsection **copy** does not include a non-infringing transient reproduction to which section 43A applies.

PART 9 – PERFORMERS’ RIGHTS

Permitted acts in relation to performances, criticism, reviews, and news reporting

176.

Fair dealing with a performance or recording

(a) For the purposes of criticism or review, of that or another performance or recording, or of a work; or

(b) For the purposes of reporting current events,

does not infringe any of the rights conferred by this Part of this Act.

NIGERIA

Copyright Act (Chapter C.28)

PART II – NEIGHBOURING RIGHTS

Protection of expressions of folklore

31.

(1) Expressions of folklore are protected against-

- (a) reproduction;
- (b) communication to the public by performance, broadcasting, distribution by cable or other means;
- (c) adaptations, translations and other transformations, when such expressions are made either for commercial purposes or outside their traditional or customary context.

(2) The right conferred in subsection (1) of this section shall not include the right to control-

- (a) the doing of any of the acts by way of **fair dealing** for private and domestic use, subject to the condition that, if the use is public, it shall be accompanied by an acknowledgement of the title of the work and its source....

SECTION 6(1) – SCHEDULES – FIRST SCHEDULE

Exceptions from copyright control

The right conferred in respect of a work by section 6 of this Act does not include the right to control—

- (a) the doing of any of the acts mentioned in the said section 6 by way of **fair dealing** for purposes of research, private use, criticism or review or the reporting of current events, subject to the condition that, if the use is public, it shall be accompanied by an acknowledgement of the title of the work and its authorship except where the work is incidentally included in a broadcast....

CHAPTER XII – INFRINGEMENT OF COPYRIGHT

Certain acts not to be infringement of copyright

57.

(1) The following acts shall not constitute an infringement of copyright, namely:

(a) a **fair dealing** with a literary, dramatic, musical or artistic work for the purpose of—

(i) research or private study;

(ii) criticism or review, whether of that work or of any other work;

(b) a **fair dealing** with a literary, dramatic, musical or artistic work for the purpose of reporting current events—

(i) in a newspaper, magazine or similar periodical, or

(ii) by broadcast or in a cinematographic work or by means of photographs....

Explanation

For the purposes of clause (a) or clause (b) of this subsection—

(i) in relation to a literary or dramatic work in prose, a single extract up to four hundred words, or a series of extracts (with comments interposed) up to a total of eight hundred words with no one extract exceeding three hundred words; and

(ii) in relation to a literary or dramatic work in poetry, an extract or extracts up to a total of forty lines and in no case exceeding one-fourth of the whole of any poem, may be deemed to be **fair dealing** with such work: Provided that in a review of a newly published work reasonably longer extracts may be deemed **fair dealing** with such work.

PHILIPPINES

Intellectual Property Code of the Philippines

CHAPTER VIII – LIMITATIONS ON COPYRIGHT

Limitations on copyright

184.1.

Notwithstanding the provisions of Chapter V, the following acts shall not constitute infringement of copyright:

(e) The inclusion of a work in a publication, broadcast, or other communication to the public, sound recording or film, if such inclusion is made by way of illustration for teaching purposes and is compatible with **fair use**; *Provided* that the source and the name of the author, if appearing in the work, are mentioned;

(h) The use made of a work by or under the direction or control of the Government, by the National Library or by educational, scientific or professional institutions where such use is in the public interest and is compatible with **fair use**....

Fair use of a copyrighted work

185.1.

The **fair use** of a copyrighted work for criticism, comment, news reporting, teaching including multiple copies for classroom use, scholarship, research, and similar purposes is not an infringement of copyright. Decompilation, which is understood here to be the reproduction of the code and translation of the forms of the computer program to achieve the inter-operability of an independently created computer program with other programs may also constitute **fair use**. In determining whether the use made of a work in any particular case is **fair use**, the factors to be considered shall include:

(a) The purpose and character of the use, including whether such use is of a commercial nature or is for non-profit education purposes;

(b) The nature of the copyrighted work;

(c) The amount and substantiality of the portion used in relation to the copyrighted work as a whole; and

(d) The effect of the use upon the potential market for or value of the copyrighted work.

185.2.

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

CHAPTER XV – LIMITATIONS ON PROTECTION

Limitations on Rights

212.

Sections 203, 208 and 209 shall not apply where the acts referred to in those Sections are related to:

212.4.

Fair use of the broadcast subject to the conditions under section 185.

SAINT CHRISTOPHER AND NEVIS

Copyright Act, 2002

PART III – MORAL RIGHTS AND RELATED RIGHTS

Objection to Treatment of Work

Right to object to derogatory treatment of work

15.

(1) Subject to subsections (2) and (3) of this section and such exceptions as may be specified in this section or pursuant to any other provision of this Act, the author of a literary, dramatic, musical or artistic work that is a protected work and the director of a film that is a protected work shall have, respectively, the right not to have the work or any part thereof subjected to derogatory treatment, and such right shall be infringed by any person who does any of the acts specified in section 37 of this Act in the circumstances specified in that section.

(2) The right referred to in subsection (1) of this section shall not apply in relation to

(a) a computer programme or to a computer-generated work;

(b) fair dealing with any work made for the purpose of reporting current events....

PART V – INFRINGEMENT OF RIGHT

Infringement of Moral Rights and Related Rights

Infringement of right to be identified as author or director

36.

(1) Subject to subsection (2) of this section, the right conferred by section 14 of this Act is infringed by a person who fails to identify the author of a work or the director of a film whenever any action specified in that section occurs in relation to that work or film.

(2) The following acts shall not constitute an infringement of the right conferred by section 14 of this Act in relation to a work to the extent that such acts are permitted under Part VI of this Act in relation to the work:

(a) fair dealing with the work for the purposes of criticism, review or the reporting of current events by means of a sound recording, film, broadcast or cable programme....

PART VI – EXCEPTIONS TO INFRINGEMENT OF COPYRIGHT

General Exceptions

Research and private study

52.

Subject to section 54 of this Act, fair dealing with a literary, dramatic, musical or artistic work for the purposes of research or private study does not infringe copyright in the work or, in the case of a published edition, in the typographical arrangement.

Criticism, review and reporting

53.

(1) Subject to section 54 of this Act, Laws of Saint Christopher *Copyright Act* Cap 18.08 43 and Nevis Revision Date: 31 Dec 2002

(a) **fair dealing** with a protected work for the purposes of criticism or review of that or another work or of a performance of a work; or

(b) **fair dealing** with a protected work, other than a photograph, for the purpose of reporting current events,

does not infringe copyright in the work so long as it is accompanied by a sufficient acknowledgment.

(2) No acknowledgment shall be required in connection with the reporting of current events by means of a sound recording, film, broadcast or cable programme.

*Determining **fair dealing***

54.

For the purpose of determining whether an act done in relation to a work constitutes **fair dealing**, the court determining the question shall take into account all factors which appear to it to be relevant, including

(a) the nature of the work in question;

(b) the extent and substantiality of that part of the work affected by the act in relation to the whole of the work;

(c) the purpose and character of the use; and

(d) the effect of the act upon the potential market for, or the commercial value of, the work.

PART VIII – RIGHTS IN PERFORMANCE

Exceptions to Infringement

Fair dealing for criticism, etc.

118.

Fair dealing with a performance or recording

(a) for the purpose of criticism or review of that or another performance or recording, or of a work; or

(b) for the purpose of reporting current events;

shall not infringe any of the rights conferred by this Part, and the provisions of section 54 of this Act shall, with the necessary modifications, apply in determining whether or not an act constitutes **fair dealing**.

SAINT LUCIA

Copyright Act of 1995

PART VI – EXCEPTIONS TO INFRINGEMENTS OF COPYRIGHT

General Exceptions

Research and private study

56.

(1) Subject to subsection (2) and section 58, **fair dealing** with a protected work for the purposes of research or private study does not infringe copyright in the work.

(2) 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 regulations under section 68 would not permit to be done under section 69 or 70 (articles or parts of published works: restriction on multiple copies of same material); or

(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.

Criticism, review and reporting

57.

(1) Subject to section 58, **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 it is accompanied by a sufficient acknowledgement.

(2) Subject to subsection (3) and section 58, **fair dealing** with a protected work (other than a photograph) for the purpose of reporting current events does not infringe copyright in the work so long as *it* is accompanied by a sufficient acknowledgement.

(3) No acknowledgement is required in connection with the reporting of current events by means of a sound recording, film, broadcast or cable programme.

*Determining **fair dealing***

58.

For the purpose of determining whether an act done in relation to a work constitutes **fair dealing**, the court determining the question shall take account of all factors which appear to it to be relevant, including—

(a) the nature of the work in question;

(b) the extent and substantiality of that part of the work affected by the act in relation to the whole of the work;

(c) the effect of the act upon the potential market for or the commercial value of the work.

PART VII – COPYRIGHT LICENSING

Exceptions to Infringement of Rights Conferred under this Part

Fair dealing for criticism, etc.

127.

Fair dealing with a performance or recording—

(a) for the purpose of criticism or review, of that or another performance or recording, or of a work; or

(b) for the purpose of reporting current events,

does not infringe any of the rights conferred by this Part, and the provisions of section 58 shall, with the necessary modifications, apply in determining whether or not an act constitutes **fair dealing**.

SAINT VINCENT AND THE GRENADINES

Copyright Act, 2003

PART V – INFRINGEMENT OF RIGHTS

Moral and Related Rights

Infringement of right to be identified as author or director

34.

(1) Subject to subsection (2), the right conferred by section 13 is infringed by any person who fails to identify the author of a work or the director of a film whenever any action specified in that section occurs in relation to that work or film.

(2) The following acts shall not constitute an infringement of the right conferred by section 13 in relation to a work to the extent that such acts are permitted under Part VI in relation to the work—

(a) **fair dealing** with the work for the purposes of criticism, review or the reporting of current events by means of a sound recording, film, broadcast or cable programme....

PART VI – EXCEPTIONS TO INFRINGEMENT OF COPYRIGHT

General Exceptions

Research and private study

50.

(1) Subject to section 52, **fair dealing** with a literary, dramatic, musical or artistic work for the purposes of research or private study does not infringe copyright in the work or, in the case of a published edition, in the typographical arrangement.

(2) Copyright 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 regulations, would not permit to be done under section 62(a) or 63(1)(b);

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

Criticism, review and reporting

51.

(1) Subject to section 52 **fair dealing** with a work for the purposes 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 it is accompanied by a sufficient acknowledgement.

(2) Subject to section 53(3), **fair dealing** with a protected work other than a photograph, for the purpose of reporting current events does not infringe copyright in the work so long as it is accompanied by a sufficient acknowledgement.

(3) No acknowledgement is required in connection with the reporting of current events by means of a sound recording, film, broadcast or cable programme.

Determining fair dealing

52.

For the purpose of determining whether an act done in relation to a work constitutes fair dealing, the Court in determining the question shall take account of all factors which appear to it to be relevant, including—

- (a) the nature of the work in question;
- (b) the extent and substantiality of that part of the work affected by the act in relation to the whole of the work;
- (c) the purpose and character of the use; and
- (d) the effect of the act upon the potential market for or the commercial value of the work.

PART VIII – RIGHTS IN PERFORMANCES

Exceptions to Infringement

Fair dealing for criticism, etc.

110.

Fair dealing with a performance or recording—

- (a) for the purpose of criticism or review of that or another performance or recording, or of a work; or
 - (b) for the purpose of reporting current events,
- does not infringe any of the rights conferred by this Part, and the provisions of section 57 shall, with the necessary modifications, apply in determining whether or not an act constitutes fair dealing.

SEYCHELLES

Copyright Act, Chapter 51

SCHEDULE 1

Acts not controlled by copyright

Fair dealing for the purpose of

- (a) private use;
- (b) research;
- (c) review or criticism; or
- (d) reporting of current events, if any public use of the work is accompanied by an acknowledgment of its title and authorship.

SIERRA LEONE

Copyright Act, 2011

PART II – COPYRIGHT

9.

(1) An expression of folklore is protected by copyright under this Act against

- (a) reproduction;
- (b) communication to the public by performance, broadcasting, distribution by cable or other means; and
- (c) adaptation, translation and other transformation, when the expression is made either for commercial purposes or outside a traditional or customary context.

(2) The protection conferred in subsection (1) does not include the right to control

- (a) the doing of any of the acts by way of **fair dealing** for private and domestic use, subject to the condition that, if the use is public, it shall be accompanied by an acknowledgement of the title of the work and its source....

14.

Copyright in programme-carrying signals is the exclusive right to prevent the distribution in Sierra Leone or from Sierra Leone of any signals by any distributor for whom those signals were not intended by their author; but it shall not be an infringement of the right of the author where the use of the signal involves

- (a) the reproduction in any material form the communication to the public and the broadcasting of the whole signal or a substantial part of it, either in its original form or in any form recognizably derived from the original by way of **fair dealing** for the purpose of scientific research, private use, criticism or review or the reporting of current events....

SINGAPORE

Copyright Act (Chapter 63)

DIVISION 3 – ACTS NOT CONSTITUTING INFRINGEMENTS OF COPYRIGHT WORKS

Fair dealing in relation to works

35.

(1) Subject to this section, a **fair dealing** with a literary, dramatic, musical or artistic work, or with an adaptation of a literary, dramatic or musical work, for any purpose other than a purpose referred to in section 36 or 37 shall not constitute an infringement of the copyright in the work.

(1A) The purposes for which a dealing with a literary, dramatic, musical or artistic work, or with an adaptation of a literary, dramatic or musical work, may constitute a **fair dealing** under subsection (1) shall include research and study.

(2) For the purposes of this Act, the matters to which regard shall be had, in determining whether a dealing with a literary, dramatic, musical or artistic work or with an adaptation of a literary, dramatic or musical work, being a dealing by way of copying the whole or a part of the work or adaptation, constitutes a **fair dealing** with the work or adaptation for any purpose other than a purpose referred to in section 36 or 37 shall include—

(a) the purpose and character of the dealing, including whether such dealing is of a commercial nature or is for non-profit educational purposes;

(b) the nature of the work or adaptation;

(c) the amount and substantiality of the part copied taken in relation to the whole work or adaptation;

(d) the effect of the dealing upon the potential market for, or value of, the work or adaptation; and

(e) the possibility of obtaining the work or adaptation within a reasonable time at an ordinary commercial price.

(3) Notwithstanding subsection (2), a dealing with a literary, dramatic or musical work, or with an adaptation of such a work, being a dealing by way of the copying, for the purposes of research or study—

(a) if the work or adaptation comprises an article in a periodical publication, of the whole or a part of that work or adaptation; or

(b) in any other case, of not more than a reasonable portion of the work or adaptation, shall be taken to be a **fair dealing** with that work or adaptation for the purpose of research or study.

(4) Subsection (3) shall not apply to a dealing by way of the copying of the whole or a part of an article in a periodical publication if another article in that publication, being an article dealing with a different subject-matter, is also copied.

Fair dealing for purpose of criticism or review

36.

A **fair dealing** with a literary, dramatic, musical or artistic work, or with an adaptation of a literary, dramatic or musical work, shall not constitute an infringement of the copyright in the work if it is for the purpose of criticism or review, whether of that work or of another work, and a sufficient acknowledgment of the work is made.

Fair dealing for purpose of reporting current events

37.

A **fair dealing** with a literary, dramatic, musical or artistic work, or with an adaptation of a literary, dramatic or musical work, shall not constitute an infringement of the copyright in the work if it is for the purpose of, or is associated with, the reporting of current events—

- (a) in a newspaper, magazine or similar periodical and a sufficient acknowledgment of the work is made; or
- (b) by means of broadcasting or a cable programme service or in a cinematograph film.

DIVISION 6 – INFRINGEMENT OF COPYRIGHT IN SUBJECT-MATTER OTHER THAN WORKS

Fair dealing in relation to other subject-matter

109.

(1) Subject to this section, a **fair dealing** with an audio-visual item for any purpose other than a purpose referred to in section 110 or 111 shall not constitute an infringement of the copyright in the item or in any work or other audio-visual item included in the item.

(2) The purposes for which a dealing with an audio-visual item may constitute a **fair dealing** under subsection (1) shall include research and study.

(3) For the purposes of this Act, the matters to which regard shall be had, in determining whether a dealing with an audio-visual item, being a dealing by way of copying the whole or a part of the audio-visual item, constitutes a **fair dealing** with the audio-visual item for any purpose other than a purpose referred to in section 110 or 111 shall include—

- (a) the purpose and character of the dealing, including whether such dealing is of a commercial nature or is for non-profit educational purposes;
- (b) the nature of the audio-visual item;
- (c) the amount and substantiality of the part copied taken in relation to the whole audio-visual item;
- (d) the effect of the dealing upon the potential market for, or value of, the audio-visual item; and
- (e) the possibility of obtaining the audio-visual item within a reasonable time at an ordinary commercial price.

Fair dealing for purpose of criticism or review

110.

A **fair dealing** with an audio-visual item shall not constitute an infringement of the copyright in the item or in any work or other audio-visual item included in the item if it is for the purpose of criticism or review, whether of the first-mentioned audio-visual item, another audio-visual item or a work, and a sufficient acknowledgment of the first-mentioned audio-visual item is made.

Fair dealing for purpose of reporting news

111.

A **fair dealing** with an audio-visual item shall not constitute an infringement of the copyright in the item or in any work or other audio-visual item included in the item if—

- (a) it is for the purpose of, or is associated with, the reporting of news in a newspaper, magazine or similar periodical and a sufficient acknowledgment of the first-mentioned audio-visual item is made; or
- (b) it is for the purpose of, or is associated with, the reporting of news by means of broadcasting or a cable programme service, by any other means of communication to the public, or in a cinematograph film.

SOLOMON ISLANDS

Copyright Act 1987

PART II – COPYRIGHTS IN LITERARY, DRAMATIC, MUSICAL AND ARTISTIC WORKS

General Exceptions

7.

(1) The copyright subsisting in any literary, dramatic, musical or artistic work by virtue of this Part is not infringed by—

(a) any fair dealing with the work for purposes of research or private study; or

(b) any fair dealing with the work for purposes of criticism or review whether of that work or of another work, if that dealing is accompanied by a sufficient acknowledgement; or

(c) reproducing the work for the purposes of a judicial proceeding, or for the purposes of a report of a judicial proceeding.

(2) The copyright subsisting in any literary, dramatic or musical work by virtue of this Part is not infringed by—

(a) any fair dealing with the work for the purpose of reporting current events in a newspaper, magazine or similar periodical, if that dealing is accompanied by a sufficient acknowledgement;

or

(b) any fair dealing with the work for the purpose of reporting current events by means of broadcasting, or in a cinematograph film.

SOUTH AFRICA

Copyright Act of 1978

CHAPTER 1 – COPYRIGHT IN ORIGINAL WORK (SS 2-22)

General Exceptions from Protection of Literary and Musical Works

12.

- (1) Copyright shall not be infringed by any **fair dealing** with a literary or musical work—
- (a) for the purposes of research or private study by, or the personal or private use of, the person using the work;
 - (b) for the purposes of criticism or review of that work or of another work; or
 - (c) for the purpose of reporting current events—
 - (i) in a newspaper, magazine or similar periodical; or
 - (ii) by means of broadcasting or in a cinematograph film; Provided that, in the case of paragraphs (b) and (c)(i), the source shall be mentioned, as well as the name of the author if it appears on the work.

Copyright

Fair use

11.

(1) Notwithstanding the provisions of subsection (1) of section 9, the **fair use** of a work, including such use by reproduction in copies 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, shall not be an infringement of copyright.

(2) The following factors shall be considered in determining whether the use made of a work in any particular case is **fair use**:

(a) the purpose and character of the use, including whether such use is of a commercial nature or is for non-profit educational purposes;

(b) the nature of the copyrighted work;

(c) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and

(d) the effect of the use upon the potential market for, or value of, the copyrighted work.

(3) The acts of **fair use** shall include the circumstances specified in section 12.

Acts of fair use

12.

(1) Notwithstanding anything contained in paragraph (a) of subsection (1) of section 9 and subject to the provisions of subsection (2) of this section, the private reproduction of a published work in a single copy shall be permitted without the authorization of the owner of the copyright, where the reproduction is made by a physical person from a lawful copy of such work exclusively for his own personal purposes.

(2) The permission under subsection (1) of this section shall not be extended to the reproduction—

(a) of a work of architecture in the form of a building or other constructions ;

(b) in the form of reprography of the whole or a substantial part of a book or of a musical work in the form of notations;

(c) of the whole or a substantial part of a data base;

(d) of a computer program, except as provided in subsection (7) ; and

(e) of any work, in case the reproduction would conflict with a normal exploitation of the work or would otherwise unreasonably prejudice the legitimate interests of the owner of the copyright.

(3) Notwithstanding the provisions of paragraph (a) of subsection (1) of section 9, the reproduction, in the form of a quotation, of a short part of a published work shall be permitted without authorization of the owner of copyright: Provided that the reproduction is compatible with fair practice and does not exceed the extent justified by the purpose of such reproduction. The quotation shall be accompanied by an indication of the source and the name of the author, if his name appears in the work from which the quotation is taken.

(4) Notwithstanding the provisions of paragraph (a) of subsection (1) of section 9, the following acts shall be permitted without the authorization of the owner of the copyright:

(a) the reproduction of a short part of a published work for teaching purposes by way of illustration, in writing or sound or visual recordings, provided that the reproduction is compatible with fair practice and does not exceed the extent justified by the purpose of such reproduction;

(b) the reprographic reproduction for face to face teaching in any educational institution the activities of which do not serve direct or indirect commercial gain, of published articles, other short works or short extracts of works, to the extent justified by the purpose, provided that the act of reproduction is an isolated one occurring, if repeated, on separate and unrelated occasions: Provided however the source of the work reproduced and the name of the author shall be indicated as far as practicable on all copies made under this subsection.

(5) Notwithstanding the provisions of paragraph (a) of subsection (1) of section 9, any library or archives, whose activities do not serve any direct or indirect commercial gain may, without the authorization of the owner of copyright, make a single copy of the work by reprographic reproduction—

(a) where the work reproduced is a published article, other short work or short extract of a work, and where the purpose of the reproduction is to satisfy the request of a physical person: Provided that—

(i) the library or archives is satisfied that the copy will be used solely for the purposes of study, scholarship or private research,

(ii) the act of reproduction is an isolated occurrence, occurring if repeated, on separate and unrelated occasions;

(b) where the copy is made in order to preserve and, if necessary replace a copy, or to replace a copy which has been lost, destroyed or rendered unusable in the permanent collection of another similar library or archives: Provided that it is not possible to obtain such a copy under reasonable conditions; and Provided further, that the act of reprographic reproduction is an isolated occurrence occurring if repeated, on separate and unrelated occasions.

(6) Notwithstanding the provisions of paragraphs (a), (h) and (j) of subsection (1) of section 9, and subject to the condition that the source and the name of the author is indicated as far as practicable, the following acts shall be permitted in respect of a work without the authorization of the owner of copyright—

(a) the reproduction in a newspaper or periodical, manner of broadcasting or other manner of communication to the public, of an article published in a newspaper or periodical on current economic, political or religious topics or a broadcast or communication relating to the same, and such permission shall not apply where the right to authorize reproduction, broadcasting or other communication to the public is expressly reserved on the copies, by the owner of copyright, or in connection with broadcasting or other communication to the public of the work;

(b) for the purpose of reporting current events, the reproduction and the broadcasting or other communication to the public of short excerpts of a work seen or heard in the course of such events, to the extent that it is justified by the purpose of such reproduction;

(c) the reproduction in a newspaper or periodical, broadcasting or other manner of communication to the public, of a political speech, a lecture, address, sermon or other work of a similar nature delivered in public, or a speech delivered during legal proceedings, to the extent that it is justified by reason of the fact of providing current information.

(7) (a) Notwithstanding anything contained in paragraphs (a) and (c) of subsection (1) of section 9, reproduction in a single copy or the adaptation of a computer program by the lawful owner of a copy of that computer programme, shall be permitted without the authorization of the owner of copyright provided that the copy or adaptation is necessary—

(i) for use of the computer program with a computer for the purpose and extent for which the computer program has been obtained;

(ii) for archival purposes and for replacement of the lawfully owned copy of the computer program in the event that the said copy of the computer program is lost, destroyed or rendered unusable.

(b) No copy or adaptation of a computer program shall be used for any purpose other than those specified in paragraph (a), and any such copy or adaptation shall be destroyed in the event that continued possession of the copy of the computer program ceases to be lawful.

(8) Notwithstanding the provisions of paragraph (f) of subsection (1) of section 9, the importation of a copy of a work by a physical person for his own personal purposes shall be permitted without the authorization of the owner of copyright.

(9) Notwithstanding anything contained in paragraph (g) of subsection (1) of section 9, the public display of originals or copies of works shall be permitted without the authorization of the owner of copyright: Provided that the display is made other than by means of a film, slide, television image or otherwise on screen or by means of any other device or process : Provided further, the work has been published or the original or the copy displayed has been sold, given away or otherwise transferred to another person by the author or his successor in title.

(10) Notwithstanding anything contained in this Part, the following shall not be an infringement of copyright:

(a) the performance or display of a work for educational or teaching purposes by government or non profit educational institutions, in classrooms or similar places set aside for education : Provided that, in the case of an audiovisual work, the performance or the display of individual images, is given by means of a lawfully made copy, or the person responsible for the performance did not know or had no reason to believe that the copy was not lawfully made.

(b) the communication of a transmission embodying a performance or display of a work by the public reception of the transmission on a single receiving apparatus, of a kind commonly used in private homes, unless:

(i) a direct charge is made to see or hear the transmission ; or

(ii) the transmission thus received is further transmitted to the public.

SWAZILAND

The Copyright Act, 1912

PART I – COMMONWEALTH COPYRIGHT

Infringement of Copyright

4.

(1) Copyright in a work shall be deemed to be infringed by any person who, without the consent of the owner of the copyright, does anything the sole right to do which is by this Act conferred on the owner of the copyright:

Provided that the following acts shall not constitute an infringement of copyright:

(a) any fair dealing with any work for the purposes of private study, research, criticism, review, or newspaper summary....

TAIWAN

Copyright Act, 2007

65.

Fair use of a work shall not constitute infringement on economic rights in the work. In determining whether the exploitation of a work complies with the provisions of Articles 44 through 63, or other conditions of **fair use**, all circumstances shall be taken into account, and in particular the following facts shall be noted as the basis for determination:

1. The purposes and nature of the exploitation, including whether such exploitation is of a commercial nature or is for nonprofit educational purposes.
2. The nature of the work.
3. The amount and substantiality of the portion exploited in relation to the work as a whole.
4. Effect of the exploitation on the work's current and potential market value.

Where the copyright owner organization and the exploiter organization have formed an agreement on the scope of the **fair use** of a work, it may be taken as reference in the determination referred to in the preceding paragraph. In the course of forming an agreement referred to in the preceding paragraph, advice may be sought from the specialized agency in charge of copyright matters.

TUVALU

Copyright Ordinance (Chapter 60)

Tuvalu applies the 1956 Copyright Act of England (*see* United Kingdom *infra*).⁴

⁴ <http://www.wipo.int/wipolex/en/details.jsp?id=7654>

PART I – PRELIMINARY

Fair use of works protected by copyright

15.

- (1) The fair use of a protected work in its original language or in a translation shall not be an infringement of the right of the author and shall not require the consent of the owner of the copyright where—
- (a) the production, translation, adaptation, arrangement or other transformation of the work is for private personal use only;
 - (b) a quotation from a published work is used in another work, including a quotation from a newspaper or periodical in the form of press summary, where—
 - (i) the quotation is compatible with fair practice; and
 - (ii) the extent of the quotation does not exceed what is justified for the purpose of the work in which the quotation is used, and
 - (iii) acknowledgement is given to the work from which the quotation is made;
 - (c) a published work is used for teaching purpose to the extent justified for the purpose by way of illustration in a publication, broadcast or sound or visual recording in so far as the use is compatible with fair practice and acknowledgement is given to the work and the author;
 - (d) the work is communicated to the public for teaching purposes for schools, colleges, universities or other educational institution or for professional training or public education in so far as the use is compatible with fair practice and acknowledgement is given to the work and the author;
 - (e) the work is reproduced, broadcast or communicated to the public with acknowledgement of the work, in any article printed in a news paper, periodical or work broadcast on current economic, social, political or religious topic unless the article or work expressly prohibits its reproduction, broadcast or communication to the public;
 - (f) any work that can be seen or heard is reproduced or communicated to the public by means of photograph, audio-visual work or broadcast to the extent justified for the purpose when reporting on current events;
 - (g) any work of art or architecture in a photograph or an audio-visual or television broadcast is reproduced and communicated to the public where the work is permanently located in a public place or is included by way of background or is otherwise incidental to the main object represented in the photograph or audio-visual work or television broadcast;
 - (h) for the purposes of current information, a reproduction in the press, broadcast or communication to the public is made to—
 - (i) a political speech or a speech delivered during any judicial proceeding; or
 - (ii) an address, lecture, sermon or other work of a similar nature delivered in public;
 - (i) for the purpose of a judicial proceeding, work is reproduced;
 - (j) subject to conditions prescribed by the Minister, a reproduction of a literary, artistic or scientific work by a public library, a non-commercial documentation centre, a scientific institution or an educational institute if the reproduction and the copies made—
 - (i) do not conflict with the normal exploitation of the work reproduced;
 - (ii) do not unreasonably affect the right of the author in the work; and
 - (k) any work is transcribed into braille or sign language for educational purpose of persons with disabilities.

- (2) In determining whether the use made of a work in any particular case is a **fair use** the following factors shall be considered—
- (a) the purpose and character of the use, including whether the use is of a commercial nature or is for non-profit educational purposes;
 - (b) the nature of the protected work;
 - (c) the amount and substantiality of the portion used in relation to the protected work as a whole; and
 - (d) the effect of the use upon the potential market for value of the protected work.
- (3) The fact that a piece of work is not published shall not of itself prejudice the requirement of **fair use** in accordance with subsection (2).

PART IV – NEIGHBOURING RIGHTS

Limitation on neighbouring rights

34. The provisions of sections 24, 27, 28, 29, 30, 33 shall not apply where the acts done are for—
- (a) private use;
 - (b) the reporting of current events, except that no more than short excerpts of a performance, sound recording or audio-visual performance fixation or broadcast are used;
 - (c) teaching science, or
 - (d) quotations in the form of short excerpts of a performance, sound recording, audio-visual fixation or fixation or broadcast, which are compatible with **fair use** and are justified by the informative purpose of the quotations.

UNITED KINGDOM

Copyright, Designs and Patents Act 1988 (C. 48)

SCHEDULE 2

Rights in Performances: Permitted Acts

Criticism, reviews and news reporting

2.

(1) **Fair dealing** with a performance or recording for the purpose of criticism or review, of that or another performance or recording, or of a work, does not infringe any of the rights conferred by this Chapter provided that the performance or recording has been made available to the public.

(1A) **Fair dealing** with a performance or recording for the purpose of reporting current events does not infringe any of the rights conferred by this Chapter.

(2) Expressions used in this paragraph have the same meaning as in section 30.

CHAPTER III – ACTS PERMITTED IN RELATION TO COPYRIGHT WORKS

General

Research and private study

29.

(1) **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.

(1B) No acknowledgement is required in connection with **fair dealing** for the purposes mentioned in subsection (1) where this would be impossible for reasons of practicality or otherwise.

(1C) **Fair dealing** with a literary, dramatic, musical or artistic work for the purposes of private study does not infringe any copyright in the work.

(2) **Fair dealing** with the typographical arrangement of a published edition for the purposes of research or private study does not infringe any copyright in the arrangement.

(3) 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 regulations under section 40 would not permit to be done under section 38 or 39 (articles or parts of published works: restriction on multiple copies of same material), or

(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.

(4) It is not **fair dealing**—

(a) to convert a computer program expressed in a low level language into a version expressed in a higher level language, or

(b) incidentally in the course of so converting the program, to copy it, (these acts being permitted if done in accordance with section 50B (decompilation)).

(4A) It is not **fair dealing** to observe, study or test the functioning of a computer program in order to determine the ideas and principles which underlie any element of the program (these acts being permitted if done in accordance with section 50BA (observing, studying and testing)).

Criticism, review and news reporting

30.

(1) **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.

(1A) For the purposes of subsection (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.

(2) **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 (subject to subsection (3)) it is accompanied by a sufficient acknowledgement.

(3) 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.

Moral Rights

79.

(1) The right conferred by section 77 (right to be identified as author or director) is subject to the following exceptions.

(4) The right is not infringed by an act which by virtue of any of the following provisions would not infringe copyright in the work—

- (a) section 30 (**fair dealing** for certain purposes), so far as it relates to the reporting of current events by means of a sound recording, film....

UNITED STATES

The Copyright Act of 1976

Limitations on exclusive rights: fair use

107.

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.

PART 3 – ACTS NOT CONSTITUTING INFRINGEMENT OF COPYRIGHT IN WORKS

Reproduction for educational or legal purposes

13.

A **fair dealing** with a work for the purpose of research or study does not constitute an infringement of the copyright in the work.

A **fair dealing** with a work does not constitute an infringement of the copyright in the work if it is for the purpose of the giving of professional advice by a legal practitioner or patent attorney.

Reproduction, broadcasting and other communication to the public for information purposes

14.

A **fair dealing** with a work does not constitute an infringement of the copyright in the work if: it is for the purpose of criticism or review, whether of that work or of another work; and an acknowledgment of the work and the author as far as practicable is made.

PART 8 – MISCELLANEOUS

Regulations

44.

(1) The Minister may, by Order in writing, make regulations prescribing all matters:

(a) required or permitted by this Act to be prescribed; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Without limiting subsection (1), regulations may: prescribe **fair dealings** with works that do not constitute an infringement of the copyright in the work; and prescribe **fair dealings** in relation to performances, sound recordings or broadcasts that do not constitute an infringement of a right protected under Part 5.

ZAMBIA

Copyright and Performance Rights Act, 1994

PART II – COPYRIGHT

Infringement of Copyright

Acts which do not constitute infringements

21.

- (1) Subject to subsection (2), the following acts shall not constitute infringement of copyright:
- (a) **fair dealing** with a work for private study or for the purposes of research done by an individual for his personal purposes, otherwise than for profit;
 - (b) **fair dealing** with a work for the purposes of criticism or review, whether of that work or any other work, provided there is a sufficient acknowledgement;
 - (c) **fair dealing** with a work for the purposes of reporting current events—
 - (i) in a newspaper, magazine or similar periodical, provided there is a sufficient acknowledgement; or
 - (ii) by broadcasting or by inclusion in a cable program service or by its use in an audiovisual work;
- (2) An act which—
- (a) conflicts with the normal commercial exploitation of a work; or
 - (b) unreasonably prejudices the legitimate commercial interests of the owner of the copyright in a work;
- shall not, for the purposes of subsection (1)—
- (i) be treated as **fair dealing** with the work....

PART V – RIGHTS IN PERFORMANCES

Acts which do not constitute infringements

50.

- (1) Subject to subsection (2), the following acts shall not constitute infringement of performer's right or recording right—
- (a) **fair dealing** with a performance or recording for private study or for the purposes of research done by an individual for his personal purposes, otherwise than for profit;
 - (b) **fair dealing** with a performance or recording for the purposes of criticism or review, whether of that performance or any other performance, provided there is a sufficient acknowledgement;
 - (c) **fair dealing** with a performance or recording for the purposes of reporting current events by broadcasting or by inclusion in a cable program service or by its use in an audiovisual work;
- (2) An act which—
- (a) conflicts with the normal commercial exploitation of a performance; or
 - (b) unreasonably prejudices the legitimate commercial interests of the performer or holder of recording right in a work;
- shall not, for the purposes of subsection (1), be treated as **fair dealing**.

PART III – PERMITTED ACTS IN RELATION TO COPYRIGHT WORKS

Fair dealing for purposes of research or private study

24.

(1) The copyright in a work shall not be infringed by any **fair dealing** for the purposes of research or private study by the person using the work.

(2) Reproducing a work shall not constitute **fair dealing** for the purposes of subsection (1) if the person who reproduces it 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.

Fair dealing for purposes of criticism, review or news reporting

29.

(1) The copyright in a work shall not be infringed by any **fair dealing**

(a) for the purposes of criticism or review of that work or of another work or of the performance of a work; or

(b) subject to subsection (2), for the purposes of reporting current events:

Provided that

(i) sufficient acknowledgement of the work shall be given, except where the work is used for the reporting of current events by means of an audio-visual work, a sound recording, a broadcast or a programme-carrying signal;

(ii) the use of a photograph for the purposes of reporting current events shall not constitute **fair dealing**.

(2) Paragraph (b) of subsection (1) shall not apply so as to authorise the publication of any part of an audiovisual work, a record or a programme-carrying signal representing a sporting event.