



## Use of Copyright Works for the Purpose of Review and Criticism

In considering whether a work in copyright falls within the “fair dealing” exemptions in the Copyright, Designs and Patents Act 1988, one should always be willing to take an impartial view and establish the facts in each particular instance. Of the legal judgements that have been made, three main principles have been established which should be considered. Firstly, that each case is judged on its own merit, i.e., what may be seen as “fair” in one case will not necessarily be so in another. Secondly, to judge and look at the intended purpose of the work reproduced and thirdly, to consider the impression and proportion of the reproduction. One should also consider how far the use may damage the economic interest of the author.

If a work is reproduced and used as the basis for **criticism or review** that use may be considered “fair dealing”. For example, if the work accompanies an article, which is a review or criticism and is directly commented on in the article, it would be “fair” to reproduce that work. However, the work must appear within the body of the article. Similarly, if an author of a written piece is expounding a theory about a particular work or an artistic movement and reproduces the work as an example of his theory, illustrating his meaning, this would also be considered “fair”.

The use of “comparative” works may also be fair. For example, it probably would be “fair” to reproduce the work by artist “x” within an article reviewing the work of artist “y” if there is a sufficient link between the two works expounded in the review. It may be “fair” for example, to include the reproduction of a Braque painting in an article which is a criticism of Picasso but also deals with the comparison or influences.

To reproduce a work included in an exhibition in a piece reviewing that exhibition would also probably be considered “fair” but it may depend on how the work is reproduced. Reproducing works subsequent to the sale of the original merely to comment on the price achieved at sale, however, or the art market generally, is not considered “fair”.

One must also consider proportions, in other words how large is the reproduction in relation to the written article? Reproduction in a magazine over a double page spread, with a one line caption, would obviously **not be considered “fair”**.

Using distorted, cropped or tinted images, additions, etc, or any treatment considered a derogatory treatment, **cannot be considered “fair” in any context and may infringe moral rights and should be avoided.**

The use of a disproportionately large quantity of images **cannot be said to be “fair”** and again, one has to consider the size of the article and its context in relation to the images reproduced.

Finally, one has to ask what is the purpose of the use of the work. Is it for the purpose of review and criticism of that or another work, or is it used merely as an illustration accompanying a story or reminiscent article, or is there another, ulterior motive, i.e., for publicity or advertising purposes and increased sales?

The use of an image on a front cover **cannot be considered “fair”**, as it is chosen because of the impact it will have on the buying public and is there to increase sales, and such use cannot be regarded as within the context of a critique or review.

**All reproductions of copyright works which may be considered to be “fair” must be accompanied by sufficient and full acknowledgement, (i.e. title of the work and artist’s name). Reproductions not acknowledged or credited are NOT CONSIDERED “FAIR”.**

**TV Listings:** Reproducing works on the day of transmission that appear in any broadcast, would be considered “fair”, given the requirements listed above.

**Events Listings:** Provided that the advertising/editorial space was provided free of charge and the reproduction was not larger than 1/16th page, and provided again that the requirements listed above were met, DACCS would not apply any fees to such use. **However, this is purely at DACCS discretion and in the interests of promoting exhibitions. DACCS does not imply that this use falls within the fair dealing provisions of the Act.**