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**CLAIRE HOWELL
BENJAMIN FARRAND**

INTELLECTUAL PROPERTY LAW

6TH EDITION

 **Pearson**

LawExpress

**INTELLECTUAL
PROPERTY LAW**

Research or private study, section 29

This applies to the original works (subject to a limitation for computer programs which have their own specific permitted acts) and typographical arrangements. The research must be for non-commercial purposes. There is a requirement that a sufficient acknowledgement be made, including the name of the author and title of the work, unless the author of the work is unable to be identified, under section 178 of the CDPA 1988. The research must be to facilitate the person's own research, not another's. So, providing study notes for others would not be included. This exception is to be extended to cover the copying of sound recordings, films and broadcasts. In the above-mentioned Copyright Directive proposal, the EU has proposed an extension of the research exception to include text and data-mining. If the UK incorporates the Directive into domestic law, then even in the event of withdrawing from the EU, this extension of the exception to copyright should be maintained in UK law after the withdrawal date.

Criticism, review and reporting current events, section 30

The section applies to works or the performance of a work. The criticism or review must be accompanied by a sufficient acknowledgement. It will only be available if the work has been made available to the public. The criticism or review does not need to be the only purpose for using the work, provided it was a significant purpose. The criticism does not have to be of the work itself, but can be directed at another work. A television programme (the work) can be used to comment on the use of 'chequebook' journalism (another work). This section was expanded by the Copyright and Rights in Performances (Quotation and Parody) Regulations 2014 to state that it is not an infringement to use a quotation from a copyright work for purposes such as criticism or review as long as the use is justified, fair and the source acknowledged. Article 4 of the proposed Directive would create a new exception all Member States would be required to incorporate, allowing for the use of works for the purposes of cross-border and digital teaching, facilitating the use of copyright protected works for the purposes of online and distance learning.

In reporting current events, the event involved does not have to be recent, but must comment on other events which are of current interest. So, an old video of Princess Diana could be used to comment upon a current event, such as the inquest into her death. It does not apply to photographs. No acknowledgement is needed in the case of reporting current events by means of a sound recording, film or broadcast where this would be impossible for reasons of practicability or otherwise.



Make your answer stand out

To get good marks, you must show that you are aware of the new regulations introduced in this area as a result of the Enterprise and Regulatory Reform Act 2013. As already mentioned, regulations have now made format-shifting and parody lawful in UK copyright law. Data mining for non-commercial purposes is also allowed, and there is a new licensing scheme to cover orphan works, use of which will be permitted if the

3 COPYRIGHT INFRINGEMENT, REMEDIES AND DEFENCES

prospective user has made a diligent search for the owner and they cannot be found. A royalty will be paid to the authorising body. Collecting societies will be permitted to operate a voluntary but opt-out collective licensing scheme.

■ Putting it all together

Answer guidelines

See the essay question at the start of the chapter.

Approaching the question

This question involves a longish quote. Be careful how you interpret it. Do not take an overly literal approach, but consider the general gist.

Important points to include

- First note that, under section 16(3) Copyright, Designs and Patents Act 1988, infringement requires that the relevant restricted act has to be carried out in relation to the whole or a substantial part of the work.
- Note that it is the quality of the part taken rather than its quantity that is important.
- Mention that when testing for infringement, comparison should be made between the part taken and the claimant's work rather than the defendant's work.
- Deal with Lord Hoffmann's statement – you could usefully introduce cases such as *Kenrick v Lawrence* here, which is a good example of what he was thinking about.



Make your answer stand out

It would help to mention something about the policy of copyright protection. For example, if ideas are expressed with little detail, there is the difficulty of deciding whether there has been copying, if denied. Also, copyright would be in danger of protecting ideas rather than expression.

If a question is asked about online infringement of copyright, particularly ambitious answers could mention copyright infringement on the Internet, the increase in voluntary rather than legally binding practices between right-holders and ISPs, as well as the EU's new Digital Single Market Strategy. These issues will be discussed in more detail in Chapter 11.

READ TO IMPRESS

Cameron, A. (2014) Copyright exceptions for the digital age: new rights of private copying, parody and quotation. *Journal of Intellectual Property Law and Practice*, 9(12): 1002.

Derclaye, E. (2010) *Infopaq International A/S v Danske Dagblades Forening* (C-5/08): wonderful or worrisome? The impact of the ECJ ruling in *Infopaq* on UK copyright law. *European Intellectual Property Review*, 32(5): 247.

Geiger, C., Bulayenko, O. & Frosio, G. (2017) The introduction of a neighbouring right for press publisher at EU level: the unneeded (and unwanted) reform. *European Intellectual Property Review*, 39(4):202.

Geiger, C. and Izyumenko, E. (2014) Copyright on the human rights' trial: redefining the boundaries of exclusivity through freedom of expression. *International Review of Intellectual Property and Competition Law*, 45(3): 316.

Inguanez, D. (2017) Considerations on the modernisation of EU copyright: where is the user? *Journal of Intellectual Property Law and Practice*, 12(8): 660.

Lee, Y.H. (2015) United Kingdom copyright decisions and legislative developments 2014. *International Review of Intellectual Property and Competition Law*, 46(2): 226.

Rahmatian, A. (2012) *Temple Island Collections v New English Teas*. *European Intellectual Property Review*, 34(11): 796.

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Go online to access more revision support including quizzes to test your knowledge, sample questions with answer guidelines, printable versions of the topic maps, and more!

Confidentiality



Revision checklist

Essential points you should know:

- ☐ The basic requirements for a breach of confidence action
- ☐ What is required for information to be regarded as confidential
- ☐ Who is bound by confidential material
- ☐ Status of employees with confidential material and trade secrets
- ☐ What is meant by unauthorised use
- ☐ Public interest defences
- ☐ Privacy, Human Rights Act and the public interest
- ☐ The EU's Directive on Trade Secrets

■ Topic map

