

Principle of Fair Dealing in Education

According to section 12 of the Act, fair dealing allows for use of a copyrighted work, without permission from the copyright holder, for illustrative purposes in teaching in any publication, broadcast or sound or visual record for teaching – but only if the name of the author is mentioned as well as the source of the work. This provision is in line with Article 9(2) of the Berne Convention that allows member states to permit the reproduction of certain copyrighted works provided that such reproduction does not conflict with a normal exploitation of the work or unreasonably prejudice the legitimate interests of the author. It is also in line with Article 10 which permits use for illustrative purposes in teaching. Click here to read the text of the [Berne Convention](#).

What does this mean?

Educators are allowed to use copyrighted materials in the classroom for illustrative purposes but are limited in that they cannot share these materials in an online space. Fair dealing only governs use in the classroom and sharing copyrighted materials online may well be infringing copyright and fair dealing as a defence is likely to fail.

What constitutes fair dealing (known as fair use in USA) differs from country to country and from case to case and therefore is unclear. In South Africa, fair dealing is not well defined and there currently exists no case law that I am aware of that addresses the definition or guidelines for fair dealing.

The doctrine is more developed in other jurisdictions – some considerations in determining fair use, which may be helpful in the South African context, are:

The nature of the work in which the copyrighted material is used – Is it a commercial work or a non commercial resource shared with others? What will it be used for? What is its purpose?

The nature of the copyrighted work – what kind of work is the copyrighted material? Is it an educational resource or a movie?

How much of the copyrighted work has been used? An image? 30 seconds of a song, 30 minutes of a movie? Look at proportion of material used to the work in its entirety.

How does the use of the copyrighted work affect its value? Has the use of the copyrighted work diminished its value or potential value?

Look at the circumstances and facts of each case

Note that fair dealing applies to individual use by a person, therefore making multiple copies do not fall within the scope of this doctrine. You will need permission to make multiple copies for student distribution.

by Shihaam



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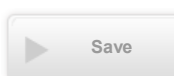
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