

Fair Dealing and Free Use of Copyright Works

This FACT FILE has been created by CCLI as a guide to Fair Dealing and how it applies to church services and other church activities. If you do not find all the information you need in this FACT FILE, visit www.ccli.co.uk or contact CCLI (details overleaf).

COPYRIGHT AND THE LAW

In most cases the reproduction of a copyright work requires prior permission and often a payment is required. However, Fair Dealing provides certain limited concessions which remove the need for prior permission or payment.

WHAT IS FAIR DEALING?

The CDPA includes certain exemptions known as 'Fair Dealing'. Fair Dealing allows for works to be used or reproduced without permission from the copyright owner. There is no strict definition of what this means, however the courts have determined economic impact to be a major consideration.

Therefore, it may be within the scope of 'fair dealing' to make copies, though not by reprographic processes (no photocopying, scanning), of short extracts of a copyright work for non-commercial research or private study, criticism or review, or reporting current events, provided a sufficient acknowledgement is included.

The purpose of this exception is to provide students and non-commercial researchers more access to copyright works. In all other cases, permission must be obtained from the copyright owner, often in the form of a copyright licence.

Educational establishments enjoy certain extended rights, but these should not be confused with the Fair Dealing rights given for private study and research.

HOW MUCH CAN BE REPRODUCED UNDER FAIR DEALING?

There isn't a strict definition of how much of a copyright protected work can be reproduced without infringement. However, as a result of various court cases over the years, it is generally considered that where the economic impact is not significant, the use *may* count as Fair Dealing. For example, Fair Dealing might permit you to make single copies of short extracts of a copyright work for non-commercial research or private study, criticism or review, or to report current events.

The basic rule is that if you're unsure about how much of a work you can reproduce, contact the copyright owner. More importantly, consider why the copies are being made. Reproducing even the smallest portions of a work included within a publication, or any medium produced for public consumption, would usually infringe copyright.

When reproducing any work, perhaps for publication or posting on a website, regardless of the amount you're copying, you should contact the copyright owner prior to publication.

Copyright is an intellectual property right given to the creators of original musical, literary and dramatic works. The Copyright, Designs and Patents Act 1988 (CDPA) is the legislation that currently operates in the UK and provides the creator with two main rights:

- **Economic** - this allows the creator to charge anyone who wishes to copy, perform or record their work for any commercial or non-commercial use.
- **Moral** - this allows the creator to protect their work from any change which might be considered offensive or not in keeping with their wishes.

REPRODUCING PUBLIC DOMAIN WORKS

Copyright in a literary, dramatic, musical or artistic work does not last indefinitely and will ultimately expire and enter the public domain. Once a piece of work enters public domain it may be performed, copied or recorded without permission and without charge.

Copyright 'lifetime' in different works varies, for example copyright in a song or a film lasts until 70 years after the death of the last to survive of the author/composer/director. Commercially available songbooks carry a 25 year typography right protecting the printed page; to freely photocopy from a songbook, both the song and the songbook must be public domain. Copyright in a sound recording, broadcast or cable programme lasts for 50 years.

When reproducing old hymns and worship songs, first ensure that you have the original work, not an updated version or arrangement that might still be in copyright. Occasionally a songwriter might take an old public domain hymn and modernise the language or arrangement. If the result is distinct enough, a new copyright might be established in the new version. If you wish to reproduce the new work copyright permission should be sought as normal, however, this does not preclude you from reproducing the original public domain work.

'COPYRIGHT FREE' WORKS

Some copyright owners do not demand any fee to reproduce or perform their work. Such works are sometimes known as 'Copyright Free' works, however, they do technically remain copyright protected. Good practice would be to acknowledge the author/composer/copyright owner if you reproduce or perform 'Copyright Free' works.

PROVISIONS FOR THE VISUALLY IMPAIRED

The law does allow for the reproduction of a work, taken from a legally obtained publication, for the visually impaired. In this case, a visually impaired person is someone who cannot read a publication or work, even with the use of glasses. In practice this means that making large print songbooks or songsheets for visually impaired people would not require any additional permission from the copyright owner.

FORMAT SHIFTING

Currently, it is illegal for someone to copy music from vinyl, CD or DVD to a computer/MP3 player or other format, even for their own private use. Copying from one format to another for personal use is known as Format Shifting. Rarely have individuals been prosecuted, but it remains illegal nonetheless.

Fair Dealing does not permit you to undertake Format Shifting generally, i.e. you can't copy all your CDs to your MP3 player, though for the specific purposes of private study and research (non-commercial), criticism, review, or news reporting, Format Shifting may occur. It remains a subject which attracts much attention in the news, and the law may well be amended in due course.

FILE SHARING

File Sharing is a phenomenon of the digital age. When a piece of music is digitised, the resulting data is known as a file. File Sharing occurs when someone makes a copy of the file and distributes it to one or more people via email, websites, or digital storage devices.

It has become a serious issue for music publishers and copyright owners. Making a copy of the music file is illegal, and distributing it to a third-party is also illegal. The result is that people obtain copies of music without making a payment to the music publishers and copyright owners.

Fair Dealing does not permit File Sharing since copies are only permitted for private and personal use.

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The information included in this Fact File is provided for information purposes only and does not constitute legal advice. If in doubt you should consult a legal expert. Whilst CCLI aims to provide information that is accurate, CCLI accepts no responsibility for any errors or omissions in the information provided.

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