

Quotation

Commentary on the Draft Legislation

4. The exception is drafted as Section 30A of the Copyright, Designs and Patents Act. As it will replace the present fair dealing exception for criticism and review, Sections 30(1) and 30(1A) will be deleted.

5. Subsection (1) defines the scope of the exception. The exception permits the use of a quotation from a work for purposes such as criticism and review. In one dimension this slightly narrows the current criticism and review exception by permitting use only for the purpose of quotation. In another it slightly widens it by allowing such quotations to be used for purposes other than, but similar to, criticism and review.

Q: Is Subsection 1 an effective implementation of Government policy?

We are unsure that this wording covers the idea behind the exception – in the case of artistic works ‘to quote’ would mean taking a part of the work. Criticising and reviewing a work of art requires the entire work to be reproduced. Using a part of an artistic work for any other fair dealing use would not be useful and could be a problem under the moral right for derogatory treatment. We believe that Criticism and Review should stay as an exception.

Subsections (1) (a) to (c) add further conditions of use to the exception. The work must have been lawfully made available to the public; the quotation must be accompanied by a sufficient acknowledgement; and the use of the quotation must be a fair dealing with the work.

1. The first two of these conditions–subsections 1(a) and (b) are conditions of Article 5(d) of the Copyright Directive.

2. The third condition, fair dealing, is intended to operate in a similar way to existing fair dealing provisions. It will permit use of a work for the purpose of quotation only to the extent that is fair.

Q: Do these conditions effectively implement the Government’s policy, including obligations under the relevant European legislation?

9. Subsection (2) adds two restrictions to the requirement for fair dealing. It

means that the use of an extract that is greater than required for the specific purpose, or the use of an extract which is not in accordance with fair practice, will not be permitted under the exception. These conditions are provided by Article 5(d) of the Copyright Directive, which this exception implements.

10. By setting out what is not, rather than what is, fair dealing, this subsection aims to allow a court to consider additional factors in any fair dealing analysis, which could further limit the use of this exception.

Q: Does Subsection (2) effectively implement the Government's policy, including obligations under the relevant European legislation?

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