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• **15/11 NT Branch.** *General meeting.* NTU, 4:30pm. For further information contact: Linda Winzar, ph 08 8999 8931, fx 08 8999 8998, linda.winzar@nt.gov.au

QLD

• **5/7 Qld Special Libraries section.** *Continuing professional development seminar.* BCC Theaterette, 5:30–7pm, free. Contact: Helen Laurelin, ph 07 3848 3980, laurbegg@bit.net.au

• **28/7–29/9 Qld Public Libraries section.** *Committee meeting and seminar* — all welcome. Venue: to be advised, 5:30 for 6pm, refreshments provided. (28/7, 29/9.) For further details please contact: Robyn Gattera, minutes secretary, ph 07 3403 4104, fx 07 3403 9969, sbispo@brisbane.qld.gov.au

• **8/8–14/11 Qld Library Technicians section.** *General meeting.* Venue: to be advised, 5:30pm for 6.00pm. (8/8, 10/10, 14/11 — AGM.) For further information contact: Yvonne Brock, ph 07 3896 2229, yvonne.brock@acgs.qld.edu.au

• **11/9–27/11 Qld Branch.** *Committee meeting.* Brisbane Administrative Centre, Conference Room, Level 6, Corner George & Ann Street, Brisbane City, 4–6pm. (11/9, 27/11 — plus AGM.) For further information contact: Kathryn Harding ph 0409 642 152, fx 07 3864 2014, k.harding@qut.edu.au

• **1/12 Qld Public Libraries section.** *AGM.* For further details please contact: Robyn Gattera, minutes secretary, ph 07 3403 4104, fx 07 3403 9969, sbispo@brisbane.qld.gov.au

SA

• **10/7–11/12 SA Branch.** *Meeting dates 2000:* 10/7, 14/8, 11/9, 9/10, 13/11, 11/12. Please note that all meetings held at: PLAIN, 8 Milner Street, Hindmarsh, 5.30pm. Contact: Amanda Nixon, ph 08 8201 2577, amanda.nixon@flinders.edu.au

• **15/11 SA Special Libraries section.** *AGM.* Further details: to be advised.

• **22/11 SA Information Science section.** *AGM.* Further details: to be advised, 5:15 for 5:45pm.

VIC

• **10/7–11/12 Vic Special Libraries section.** *Committee meeting.* All members and students are welcome as observers. CSIRO Health Sciences and Nutrition, 343 Royal Parade, Parkville, 5:30pm, unless otherwise advised. [10/7, 14/8, 11/9, 9/10, 13/11, 11/12, second Monday of each month (except Public Holidays)]. Contact: Danila Durante, ph 03 9662 7246, danila.durante@hns.csiro.au

• **11/7 Vic Branch.** *AGM. Guest speaker: Mairéad Browne.* Plus presentation of ALIA Victorian Branch Merit Award and ALIA Innovation Awards (sponsored by Library Locums). Parliament House, Spring Street, Melbourne, 5:30 for 6pm. *RSVP by 30 June* to: h.sweeny@c031.aone.net.au

• **15/7–14/10 Vic School Libraries section.** *Committee meeting.* Statewide Resource Centre, 217 Church Street, Richmond, 9:30am, all members welcome. (15/

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Copyright update

Fair dealing...

Fair Dealing is often described as an exception or defence to copyright infringement: in other words, an individual may rely on a defence of fair dealing without payment to the copyright owner.

Elements of the defence

To make out a defence of fair dealing, the act of copying (or any use which falls within the bundle of copyright owner's exclusive rights) must not only be fair, but it also must be dealing for a prescribed purpose. There are five fair dealing purposes: fair dealing for research or study; fair dealing for criticism or review; fair dealing for reporting news; reproduction for purpose of judicial proceedings and professional advice. These categories apply to dealings with works and subject matter other than works. For literary, artistic, musical and dramatic works see sections 40,41,42,43 of the *Copyright Act*. For audio visual items such as films, sound recordings and broadcasts see sections 103A,103B,103C of the *Copyright Act*.

Fair dealing for research or study

Fair Dealing for research or study is probably the most important defence and it is the only fair dealing defence which is subject to a quantitative test (s40). It is worth noting that the quantitative test only applies to literary, dramatic and musical works and not artistic works and audio visual items. Where copying exceed the copying limits set by the quantitative test, the copyright user must refer to considerations of fairness: Section 40(2) gives some by providing a list of five fairness factors.

Remember that this is a non-exhaustive list which means that a court may take into account other considerations when deciding whether the dealing is fair. It has been suggested that a court would consider the fairness factors to be relevant to all fair dealing categories and not just fair dealing for research or study purposes. (Lahore 40 115)

Fairness factors

1. the purpose and character of the dealing:

A transformative use is more likely to be fair dealing as opposed to simply copying the work and not using it to produce anything new [see for example, *American Geophysical v Texaco*]. Dealings which are purely commercial are unlikely to be considered to be fair as illustrated by the *Media Monitors Case* [De Garis v Neville Jeffress Pidler]. The federal court in this case held that the news clipping agency could not rely on the defence of fair dealing for research or study when supplying photocopied articles to clients because company itself was not engaged in research or study and the dealing itself was purely commercial one. However, it is worth noting that fair dealing for research or study within a commercial context has never been tested in an Australian Court and it does not necessarily follow that a

commercial dealing would fall outside the fair dealing defence.

2. *the nature of the work or adaptation.* It is generally accepted that a dealing with factual work is more likely to be considered to be fair as opposed to a dealing with a work of fiction [*American Geophysical v Texaco*].

3. *the possibility of obtaining the work or adaptation within a reasonable time at an ordinary commercial price.* This factor would seem to be directed at out-of-print works and other works which are not readily available not only through sales or subscriptions but through other sources such as commercial document delivery services. A court is more likely to find that a dealing is not fair if the work is commercially available.

4. *the effect of the dealing upon the potential market for or value of the work or adaptation.* This is perhaps the most important fairness factor. It has been suggested that the 'potential market' for an item would not be limited to journal subscriptions and book sales but it would extend to market for royalties via statutory and voluntary licensing schemes [*American Geophysical v Texaco*].

5. *in a case where part only of the work or adaptation is copied — the amount.* A court is likely to consider both how much is taken and the quality of what is taken. Whether or not a entire work may be copied will depend largely on the facts of each case.

Fair Dealing and the Digital Agenda Bill

The *Copyright Amendment (Digital Agenda) Bill 1999* (the *Digital Agenda Bill*) confirms that fair dealing applies to the new right of communication and obviously it continues to extend to existing exclusive rights. The new test for determining what is a reasonable portion of electronic material is the biggest change to the fair dealing defence in the Bill. See ss10(2A) of the *Digital Agenda Bill*. This has been created to provide certainty for students and researchers relying on the fair dealing defence for research or study purposes. The test will allow the copying of up to ten percent of the words of a published literary or dramatic work or one chapter whichever is the greater. This amendment will not apply to musical works, computer programs and databases. Another important component of the new test is the new subsection 10(2C) S10(2C) makes it very clear that a person may only have one bite of the cherry. Under this proposed subsection, a person relying on fair dealing may only copy a reasonable portion of an electronic work on one occasion: a person cannot return to the same work to copy another reasonable portion of the item at a later stage. Remember that the new test only applies to electronic source material. The current reasonable portion test will continue to apply to print material. ■