Copyright – Should Fair Dealing be replaced by Fair Use?

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This essay will critically discuss whether the fair dealing and public interest defences found in the UK’s copyright law are inflexible and restrictive, and if they should be replaced by a general fair use defence. The application of fair dealing and public interest to other areas of law will not be considered. The essay will start by introducing the UK’s copyright law, its history and purpose, before defining and describing the fair dealing and public interest defences. It will then analyse the advantages and disadvantages of these defences. It will then introduce the fair use defence found in US law and examining whether it would be a more suitable option. It will conclude that while fair dealing is inflexible and restrictive, fair use is insufficiently certain and impractical to adopt. The essay will end by considering additional options and suggest that a more fundamental reform of copyright law is required, based on limiting the rights conferred by it to only those areas where it is justified.

Introducing Copyright

Copyright is a set of rights and restrictions that subsists in certain types of work. In the United Kingdom, the majority of these rights are defined in the Copyright, Designs and Patents Act\textsuperscript{1} as amended, while some aspects are defined elsewhere.\textsuperscript{2} The Act defines copyright as a property right\textsuperscript{3} and sets out the three main types of work which it covers; original literary, dramatic, musical and artistic works, sound recordings, films and broadcasts, and the typographical arrangements of published editions.\textsuperscript{4}

Copyright initially rests with the author of a work\textsuperscript{5} and lasts for seventy years after the death of the author(s) in the case of literary, dramatic, musical or artistic works,\textsuperscript{6} or films,\textsuperscript{7} or if the date of death is unknown, seventy years after the work was made or published.\textsuperscript{8} If the work is computer-

\textsuperscript{1} 1988 c.48, (“the Act”)
\textsuperscript{2} Such as the resale right given by the Artist’s Resale Right Regulations, or the Public Lending Right Act 1976
\textsuperscript{3} s1(1)
\textsuperscript{4} s1(1)(a)-(c)
\textsuperscript{5} As defined by, and with the qualifications given in, ss9-11
\textsuperscript{6} s12(2)
\textsuperscript{7} s13B(2)-(3)
\textsuperscript{8} s12(3), 13B(4)
generated, a sound recording or a broadcast, the copyright lasts until the end of the calendar year 50 years after it was made. In all of the above cases, if the work originates in a country outside the European Economic area (“EEA”), and none of the authors is an EEA national, the copyright lasts as long as it would in the originating country, provided that is shorter than the above. The copyright in typographical arrangements lasts for 25 years after its first publication.

A copyright owner is granted the right to restrict others from doing certain acts with their copyrighted work (i.e. a work in which they own the copyright). These are laid out in Part I, Chapter II of the Act and include copying the work (or, as with all cases, a substantial part of the work, and either directly or indirectly), issuing the work to the public, renting or lending the work, performing, showing or playing the work in public, communicating the work to the public or making an adaptation of the work and doing any of the above with regard to that adaptation. Similarly, copyright is infringed by someone who imports, possesses or deals with an infringing copy of a work or aids in the creation of such a copy.

In addition to the above 'economic' rights, (all of which can be waived, transferred or licensed as required), copyright grants the author certain moral rights, including the right to be identified as the author, protection from derogatory treatment and a right to privacy in certain films and photographs. These are defined in Part I, Chapter IV of the Act, last as long as the other elements of copyright (in most cases) and can be waived, but not transferred.

Modern copyright law originated in the Copyright Act 1709 (the “Statute of Anne”) which granted authors of books the “sole right” to print books for a limited time of fourteen years, with an optional fourteen-year extension (or twenty-one years for books already published). Books covered by copyright needed to be registered, and nine copies deposited in the Copyright libraries. The statute was aimed at preventing publishers printing and distributing books, without the consent of their authors, and to encourage the composition of “useful books”.

Since 1710, copyright law has been developed and updated through various acts of Parliament, international treaties and more recently, EU directives. Copyright has been expanded to cover a far greater range of works and the duration has been extended significantly beyond the original 14 (or twenty-eight) years. This expansion has been the result of advances in technology (such as the addition of sound recordings, films and computer programs) and pressure from those with interests in the area.

There are four main justifications given for copyright; the natural law right an author has to control their creations, the idea that creators deserve a just reward for their efforts, which in turn, is likely to stimulate creativity by giving creators greater security, and the public interest in encouraging creators to make and disseminate their works as widely as possible. In the UK (as can be seen from the Statute of Anne) the latter reasons are more significant.

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9 ss12(7), 13A(2), 14(2)
10 s15
11 Note that copyright can be transferred as personal or moveable property, s90(1)
12 s16(3)
13 s16, then ss17-21 for specific details of each act and restriction.
14 ss22-23
15 As defined in s27
16 ss24-26
17 s86
18 s87
19 8 Anne c. 19
20 Such as the Berne Convention, or the Agreement on Trade-Related Aspects of Intellectual Property Rights (“TRIPS”).
22 Copinger, para. 2.05
However, copyright on its own, could be used in a way to prevent access to works, locking away parts of a cultural heritage behind excessive licence fees or uncertainty as to the author. Given that part of the justification for copyright is that it encourages the creation and dissemination of works (and thus the spread of culture) this means that copyright, if unchecked, has the potential to defeat its own purpose. There is a need for “balance between the rights owners... and the interest of the public in access to protected works” which is dealt with (whether successfully or not) by the creation of exceptions, defences and limitations to copyright.

For the most part, these defences are found in Part I, Chapter III of the Act, which contains over fifty exceptions and limitations. These include the more general fair dealing defences (covering the wide areas of research and private study, criticism and review, news reporting and education) and then more specific defences for the visually impaired, educational institutions and libraries, users of computer programs and databases, and around twenty miscellaneous defences. Many of these defences have been added onto the Act by subsequent legislation.

The majority of these defences apply to specific classes of work, specific types of use and are narrowly defined. Even the more general “fair dealing” defences are restricted to fairly specific circumstances.

The Fair Dealing Defences
The concept of fair dealing was introduced by the 1911 Copyright Act and covers three main areas of permitted acts; private study and research, criticism and review, and news reporting. These defences are now found in s29 and s30 of the Act, and added to these is an exception for education in s32. While the requirements for each individual area are laid out in the Act, the definition of fairness is not given and so has been developed by the Courts.

Fair dealing for the purposes of research and private study is set out in s29 of the Act. This permits any acts that would otherwise infringe copyright, provided the relevant conditions are satisfied. For the purpose of research, any fair dealing with typographical arrangements is permitted. Similarly, fair dealing with literary, dramatic, musical or artistic works for the purpose of research is also permitted provided that it is also “for a non-commercial purpose” and suitable acknowledgement is given. In Green Amps, the High Court held that the non-commercial restriction was breached when copying was done during non-commercial research, but where the end result was a commercial product.

As with research, fair dealing for the purpose of private study does not infringe the copyright in

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23 A significant problem facing archivists, museums and academic institutions is that of “orphan works” - where the copyright owner is difficult to locate and so licences are impossible to obtain, resulting in users being unable to work with certain material for fear of litigation.
24 Copinger, 1.34
25 For example, s50A concerns only computer programs and only allows the creation of back-up copies “necessary … for … lawful use”.
26 Copyright Act 1911, s2(1)(i)
27 S29(2)
28 S29(1), as amended by The Copyright and Related Rights Regulations (“the 2003 regulations”), reg. 9(a)
29 “sufficient acknowledgement” is defined in s178. No acknowledgement is required where doing so would be impossible for any reason; s29(1B)
30 [2007] EWHC 2755 (Ch) [21]-[23]
literary, dramatic, musical or artistic works, or typographical arrangements of published editions. Unlike the research exemptions, there is no requirement, in the statute, for acknowledgement or non-commercial dealing only. While there is limited English case law on this, in Australia “study” has been held to have its dictionary meaning.

The fair dealing exceptions for research and private study do not cover sound recordings, films or broadcasts. s29 notes that certain acts involving computer programs are also not covered by these exceptions, as they are given specific defences elsewhere in the Act.

In the case of both research and private study, the copying may be done by a party other than the researcher or student, provided that, if the copying is done by a librarian, the relevant conditions concerning libraries are not breached, or if by others, that the copies are being produced for only one person.

Fair dealing for the purposes of criticism and review is set out in s30 of the Act. This permits fair dealing with any work for the purpose of criticising or reviewing that work, other works, or a performance of a work, provided that sufficient acknowledgement is given. For this defence to apply, the work must have been made available to the public through an authorised act, and a (non-exclusive) list of example acts is given. In Pro Sieben, the Court of Appeal held that criticism and review “should be interpreted liberally” and were not limiting to reviewing or criticising the style or content of a particular work and could cover criticism of “the ideas to be found in a work and its social or moral implications.” However, in Ashdown, the Court of Appeal held that criticism could not be used to justify copying the minutes of a meeting when it was the actions of those present being criticised.

This section also provides for an exception to copyright for the purpose of reporting current events, which applies to all works, aside from photographs, provided that sufficient acknowledgement is given. As with criticism and review, the Court of Appeal has held that “current events... should be interpreted liberally” and the event need not be “current solely in the sense of recent in time” but of “current interest to the public”.

While the main aim of fair dealing is to cover research and private study, criticism and review, and reporting of current events, it also applies to copying of literary, dramatic, musical and artistic works done for instruction.

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31 s29(1C), as introduced by reg. 9(b), the 2003 Regulations
32 s29(2)
33 De Garis, [33]
34 s29(4), inserted by The Copyright (Computer Programs) Regulations, mentions converting computer programs, which is dealt with in s50B, and s29(4A), inserted by the 2003 Regulations, covers observation and study, dealt with in s50BA.
35 The conditions are given in The Copyright (Librarians and Archivists) (Copying of Copyright Material) Regulations made under s40.
36 s29(3)
37 s30(1)
38 s30(1A)(a)-(e)
40 s30(2)
41 Sufficient acknowledgement is not required if the reporting is being done through a sound recording, film or broadcast and would be impossible for any reason; s30(3)
42 Pro Sieben v Carlton, supra
43 Ashdown, supra, [64]
44 s32(2A)
45 The same qualifications to publication apply as for criticism and review, i.e. s30(1A); s32(2B)
There is no statutory definition of what dealing is fair. While there are different categories of fair dealing (described above), similar criteria are applied in determining fairness. The test is objective, and involves asking “whether a fair minded and honest person would have dealt with the copyright work, in the manner that [the defendant] did, for the purpose [specified].” There is no fixed set of factors for this test, but three important ones have been established:

The first main factor is “whether the alleged fair dealing is... commercially competing with the proprietor's exploitation of the copyright work”. It is not sufficient to show that the dealing is commercial for it to be fair, although some types of fair dealing are restricted to non-commercial use.

The second factor identified is whether or not the work has already been made available to the public in some form. Again, this does not make fair dealing with unpublished works impossible, but will be a highly relevant factor. Similarly, it may be enough that the work was circulated to a wide enough group, rather than needing to be published to the entire world.

The third major factor is the amount and importance of the work taken. No more of the work should be taken than is “reasonable or appropriate”, although in some cases this could amount to all of the work if it is small. Similarly, it may be acceptable to copy an entire work in order to select reasonable amounts for a suitable end purpose. A set of relevant guidelines was laid out by Mann J in Fraser-Woodward, which lists the above factors, and also considers the motives of the user, the true purpose of the work and whether the use “unreasonably prejudice[d] the legitimate interests of the author or conflict[ed] with the author's normal exploitation of the work.”

The Public Interest Defence

There is no explicit public interest defence or exception to copyright created by the Act (or any other act), but the Act does specify that it does not affect “any rule of law preventing or restricting the enforcement of copyright, on grounds of public interest or otherwise.” This has led to the continuation and development of a “somewhat limited” public interest exception to copyright.

In rare instances a court will refuse to enforce copyright on the grounds that enforcing it in any circumstances as to do so would be against the public interest. In A-G v Guardian, Lord Jauncey

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46 “reprographic process” is defined in s178
47 See BBC v BSB where it was held that the expansion of fair dealing for current events to cover broadcasts did not create a new defence, merely brought broadcasts within the general set of fair dealing defences.
48 Hyde Park, [38]
49 Ashdown, [70], approving factors given in Laddie, para. 20.16
50 Or even that the user may compete directly with the copyright owner's use, see BBC v BSB, supra
51 Pressdram, 263d
52 Hubbard, 95a
53 PCR Ltd, 426
54 Hubbard, 98
55 Pro Sieben, supra, at 625
56 [55]
57 This final requirement comes directly from Article 9(2) of the Berne Convention.
58 s171(3)
59 Unilever, [18]
noted that the courts would “not enforce copyright claims in relation to every original literary work”, particularly not in cases where the work was “calculated to deceive the public” or was “grossly immoral.” However, neither of the cases referred to are recent and it is possible that courts are unlikely to use such factors. More recently, however, the Court of Appeal has held that “the circumstances in which public interest may override copyright are not capable of precise categorisation or definition” and suggested that the public interest may “trump the rights conferred by the Copyright Act” in particular cases.

Of particular importance is the conflict between copyright and freedom of expression, as enshrined by the Human Rights Act. In Ashdown, the court noted that there could be “occasions when it is in the public interest ... that the public should be told the very words used by a person, notwithstanding that the author enjoys copyright in them.” In most cases, however, the main way of applying this defence would involve “declining the discretionary relief of an injunction” as freedom of expression alone is not normally enough to cover free use of another's work.

While the use of the public interest defence is “very rare,” as in most cases, the fair dealing defences will be enough to protect the public interest in freedom of expression, this defence functions “as a safety valve” in ensuring that copyright cannot be abused as a form of censorship.

Both the fair dealing exceptions and the public interest defence are very specific, with limited applications and some significant gaps (such as the use of sound recordings or films for research and private study) – despite these defences being the wider of the ones found in the Act. This is symptomatic of the wider approach taking in UK copyright law to have a large number of specific defences, rather than a few general defences as found elsewhere (both in other jurisdictions and in other areas of law).

This approach, however, has a significant flaw in that it requires new exceptions to be created when they are needed. While this has been possible in some cases (as evidenced by the number of amendments and additions to the Act since 1988), in other areas, the Act has not been updated when, perhaps, it should have been. Recently, the Hargreaves Review noted that “exceptions have failed to keep up with technological and social change, leading to widespread consequences.”

These restrictive defences place tight bounds on what is lawful use, and with the possible exception of the Court of Appeal in Ashdown, the judiciary seems unwilling to push these boundaries (even if they could) and instead appear to be limiting the law even further. This is particularly apparent in the case of parody, where a “nascent exception” was suggested and then “killed off” by the judiciary in subsequent cases. In any event, the restrictive nature of the exceptions only gives judges the flexibility to rule within the scope defined in case law or the various Acts. This means

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60 Slingsby v Bradford and Glyn v Weston respectively.
61 Ashdown, at [58]
62 Human Rights Act 1998, in particular, s12 and Article 10, European Convention on Human Rights
63 Ashdown, [43]
64 ibid, [46]
65 ibid, [59]
66 ibid, [66]
67 Sims, 343
68 As a specific example, in BBC v BSB, Scott J noted (at 148) that while broadcast copyright was added in the Copyright Act 1956, s14, it was not added to the fair dealing defences until the 1988 Act (whether through an oversight or purposefully). Had the case been brought before the 1988 Act had come into effect, fair use could not have been pleaded.
69 Hargreaves, para. 5.2
70 Burrell, 374-376
71 In particular, in Glyn v Western and Joy Music
72 Schweppes and Williamson Music
the defences are “characterised by a certain rigidity, that leaves judges no elbow room for the deliverance of just results.”  

It could be argued that this rigidity is balanced by a degree of certainty that is desirable in law. However, as can be seen above, the requirements for fairness or public interest are still flexible enough for even the judiciary to disagree (as can be seen in the successful appeal in *Pro Sieben*, among other cases). If there is uncertainty within the legal profession, it is unsurprising that there is a “growing mismatch between what is allowed under copyright exceptions, and the reasonable expectations and behaviour of most people.”

The Hargreaves Review concluded that fair dealing, as “a policy process whereby every beneficial new copying application of digital technology waits years [or indefinitely] for a bespoke exception, will be a poor second best.” Given this, it seems appropriate to consider alternative models for copyright defences; the most often raised being the more general “fair use” model currently used in the USA.

**Fair Use in the US**

Unlike the UK, the USA has preserved the more general “fair use” exception to copyright law. It is one of several exceptions and is currently found in the Copyright Act 1976 (“the US Act”). This defence applies to any copyrighted work and can cover any of the restrictions placed by copyright. While research, criticism, news reporting and teaching are specifically mentioned, the defence is not confined to these purposes and has been found to cover a range of circumstances including parody and the use of thumbnail images in Internet searches.

As with fair dealing, for use to be fair a number of factors can be considered, but four, non-exclusive factors that must be considered is given in the US Act. The first factor is “the purpose and character of the use” which considers whether the use merely involves copying the original, or transforming it by “adding new expression or meaning.” If the purpose involves research, criticism or education, this will likely support the use being fair, contrasted with if the use is for commercial or entertainment purposes.

The second factor is “the nature of the copyrighted work.” The work being factual, relating to news or being non-fictional will support fair use, whereas a creative work is less likely to satisfy this factor. Similarly, a published work is more likely to be fair than an unpublished one. The third factor considers “the amount and substantiality of the portion used” when compared with the entire work. In general, this means that the more of the work taken, the less likely the court will find the use fair. In addition, the court will consider whether a minor part of the work has been taken (favouring fair use) or if the “heart” of the work is being used.

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74 Angelopoulos, 336
75 Hargreaves, para. 5.10
76 ibid, 5.23
77 *Campbell*
78 *Kelly v Arriba*
79 § 107 (1)
80 Stanford
81 § 107 (2)
82 § 107 (3)
83 See *Harper & Row*, among others.
The final compulsory factor is “the effect of the use upon the potential market for or value of the copyrighted work.” In some cases, it is likely that non-competing, non-commercial use will be fair unless the use is harmful in some other way such as “adversely affect[ing] the potential market” for the work. As with fair dealing, none of these factors will necessarily be conclusive, but all should “be explored, and the results weighed together, in light of the purposes of copyright.”

As can be seen, fair use is a far more general defence than the fair dealing or public interest defences in UK law. This gives courts the “elbow room” they need to create new exceptions (or modify existing ones) as technology develops and society changes. With an open-ended defence, there is no need to worry about what the future may bring as the law is flexible enough to adapt to changes.

However, fair use provides “flexibility at the expense of certainty”. The Hargreaves Review found that many of those who gave evidence were concerned that adopting fair use would bring “massive legal uncertainty,... an American style proliferation of high cost litigation; and a further round of confusion for suppliers and purchasers of copyright goods.” In the US, fair use has been built up over time (through case and statute law) and “a complex web of understandings, agreements and policy statements support the legislative provisions.” In addition, fair use is merely “one aspect of the distinctiveness of the American legal framework,” where it is “closely bound up with constitutional guarantees of free speech” among other aspects not necessarily present in the UK.

One significant area of uncertainty concerns the apparent assumption (on all sides) that, were fair use to be adopted, the judiciary would use it to protect users, rather than strengthen copyright. It is unsurprising that, so far, the judiciary (along with the legislature) appear more include to strengthen the position of copyright owners rather than that of the public, given that the former will often be represented in courts and in Parliament. Even if fair use were adopted, there is no guarantee that, without strict legislative control (which would undermine the advantages it provides), it would be used to protect users and permit new technologies, rather than further restricting the available defences.

In addition to the above disadvantages to fair use there is also the question of its legality, under the UK’s commitments as a member of the EU. The Hargreaves Review found that “importing fair use wholesale was unlikely to be legally feasible in Europe,” and TRIPS requires that any exceptions and limitations to copyright be confined to “certain special cases.” Even though the US is a signatory to TRIPS, it is uncertain as to whether fair use satisfies this requirement. Adopting a US-style fair use defence could bring added complications and uncertainty due to the legal challenges

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84 § 107 (4)
85 Sony Corp, [46]
86 Campbell
87 The fair use for “time-shifting” by the courts in Sony Corp has be applied to “space-shifting” (with varying success) whereas it is impossible for the UK courts to widen s70 of the Act (which creates a defence for “time-shifting”) to “space-shifting” as that could only be done through new legislation.
88 Burrell, 364-365
89 Hargreaves, para. 5.13
90 Burrell, 382
91 Hargreaves, para. 5.16
92 Burrell, 382
93 Burrell, in particular, 365, 387-388
94 As evidenced in BT & TalkTalk, where ten copyright-owner groups were represented in court, and the three public or consumer groups were only able to provide written submissions.
95 Hargreaves, page 5
96 TRIPS, Article 12
97 Burrell, 384-385
Alternative Defences

Given the potential difficulties with adopting a general fair use defence, it is necessary to consider other options. The Hargreaves Review recommended against fair use but suggested that the existing defences be expanded to the maximum available under EU law (particularly concerning parody, non-commercial research and archiving) and that the UK should push for a change EU law to develop a more general exception making copyright law adaptable to new technologies. However, this would seem to involve, in the short term, merely a slight relaxation of fair dealing (dependent, as noted above, on judicial discretion) and, in the long term, a new, more general defence (along the lines of fair dealing) which would either have the breadth and uncertainty of fair use, or the restrictiveness and inflexibility of fair dealing.

Moving away from the US and EU, another option would be a hybrid fair use and fair dealing model, such as that used in Singapore. This involves a mixture of general, fair use-style factors for lawful use, combined with more specific, fair dealing-style requirements in certain cases (in addition to specific defences, as found in both UK and US law). But, as with both fair use and fair dealing, this involves balancing the rigidity and certainty of one with the flexibility and doubt of the other. While it may be possible to find a perfect balance for today, this will not necessarily be the correct balance in the future.

In order to seek a solution, it is necessary to consider the underlying problem at the heart of this issue. The defences to copyright are “designed to balance the interests of copyright owners with the public interest” and the criticism of the existing law is that it fails to balance this correctly as existing or future acts that are arguably in the public interest do not fall within the existing defences. With fair dealing this is a consequence of a law drafted such that “rights are described in open-ended and technologically neutral terms, whereas exceptions are defined by reference to specific acts and specific technologies” and while fair use may overcome this limitation (to a degree) it leaves a great deal of uncertainty and is reliant on judicial discretion and understanding of specific methods of copying (and other acts restricted by copyright), and their current and potential benefits.

Copyright defines rights in such a broad way that is has not only been “extended to cover certain types of product, irrespective of their form, merit or purpose” but to use of works that are potentially of great benefit both to the wider public and the copyright owner or creator, almost by accident. This results in copyright being used to protects works in ways that do not fit within any of the initial justifications for copyright (such as with the memorandum in Ashdown, or internal company documents as in Lion Laboratories). The solution to this dilemma may require a more radical reform of copyright law, with a closer focus on the purpose of copyright.

One option could be to reverse the problem with fair dealing highlighted above, by making the rights and privileges granted by copyright defined by reference to specific acts, technologies and

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98 As occurred with the Digital Economy Act, where issues with compatibility with EU legislation resulted in a judicial review (BT & TalkTalk) which, while mostly unsuccessful, hindered the progress of the measures in the Act.
99 Hargreaves, page 51
100 Copyright Act, Chapter 63, ss35-37
101 Copinger, para. 9.02
102 Burrell, 364
103 Burrell, 378
works, i.e. those to which the justifications for copyright apply. As a consequence, the permitted acts will be open-ended and technologically neutral.

This would require significant changes to laws at a national and international level, and while it would retain a degree of rigidity and restrictiveness (in terms of what, at any one time, would be covered by copyright), it would place the burden of updating the law on copyright owners who are the ones primarily seeking to benefit from this law and who are more likely to be in a position to seek these changes. The necessary delay between advances in technology and the law could encourage and enable innovation and co-operation between developers and copyright owners, rather than forcing developers to seek (potentially costly) licence agreements or face legal action.

Arguably, such a system would be similar to that initially created by the Statute of Anne, whereby copyright only restricted the copying of published, registered books. It is the subsequent vast expansion in both the scope and duration of copyright, combined with a similar expansion in the possible uses of works that has created conflicts between the law, copyright owners, technologies and the public. As with any set of laws, a new system would rely on Parliamentarians and judges upholding it and the principles it stands on.

It is possible that, with suitable safeguards on its expansion, a system could be developed that sufficiently rewarded and encouraged the creation of artistic works while neither placing inflexible restrictions on the use of such work, nor being too uncertain and dependent on judicial discretion to be practical and efficient.

**Conclusion**

In conclusion, the fair dealing and public interest defences in UK copyright law are inflexible and restrictive, being unable to adapt to new technologies or social changes. While the public interest defence may have been given new life through the Human Rights Act, it is still limited in scope and application. This inflexibility is balanced by a degree of certainty as to what will be found lawful, however small that degree may be. A general, fair use defence would give the judiciary the flexibility required for adapting copyright law, but this would come at the cost of certainty; with each application of the defence needing to be fought out in the courts. Its effectiveness would be reliant on the judiciary applying it to protect users to a suitable degree, and parties of equal strengths being before the court. Fair use may be suitable in the US, but it is supported by a legal, political and cultural backdrop that does not exist in the UK and may be impossible to duplicate.

While it may be possible to find a balance between the general and specific approaches to copyright defences, as found in Singapore, such a solution may only be a temporary solution and would likely need regular updating. In order to find a long-term solution it may be necessary to return to the justifications and purpose of copyright itself, and restrict the rights conferred by copyright to only those situations that are necessary and proportionate. Such a solution would need careful policing to ensure that the rights (or limitations) do not expand too far but could lead to a copyright system that is suitably flexible while being sufficiently certain.
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