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LOGOS AND NO-GOS



“COPY THAT”: A SUMMARY OF THE NEW COPYRIGHT REGULATIONS ON QUOTATIONS, PARODIES AND PERSONAL USE

On 1 October 2014 two new regulations will come into force that amend the Copyright, Designs and Patents Act 1988 (the CPDA) by adding further exceptions to the current copyright regime. The first regulation extends the current provisions for quotations of copyrighted works used in criticism and review and also addresses parodies (The Copyright and Rights in Performances (Quotation and Parody) Regulations 2014). The second regulation addresses taking copies of copyrighted works for personal use (The Copyright and Rights in Performances (Personal Copies for Private Use) Regulations 2014). These latest changes reflect the need for the CPDA to keep up with the times and embrace the digital age.

QUOTE UNQUOTE

The Copyright and Rights in Performances (Quotation and Parody) Regulations 2014 (the Quotation and Parody Regulations) add to s30 of the CPDA which addresses quotations and parody of works.

As the law currently stands, it is a copyright infringement to quote a copyrighted work other than for reasons of criticism, review and reporting of current events (e.g. in an academic essay). This narrow exception has long been regarded as outdated in a society where quoting of films and books is commonplace. This has led to strange distinctions between quoting a popular song lyric to critique it in an academic journal (which would not infringe) and quoting that same song lyric in a novel (which would infringe).

New section 1ZA (which will be added to s30(4)(1) of the CPDA) widens the scope of the current exception for criticism and review to include other purposes. It provides that copyright in a work is not infringed by the use of a quote from the work whether for criticism or review or otherwise (emphasis added) provided that the work has been publically available, the use of the quote is fair dealing with the work, the extent of the quote is no more than is required by the specific purpose for which it is used, and the quote is accompanied by a sufficient acknowledgement attributing the work to the copyright owner (unless this is not practically possible). In assessing the changes, the IPO has observed that this amendment will save costs on copyright clearance, promote freedom of expression, and align our law with the rest of Europe.

BEYOND PARODY

The current copyright regime also means that if a British comedian wants to parody a copyrighted work, they must first clear their use of it. This can be difficult and time consuming, particularly when current affairs move so quickly in the age of 24 hour news and the internet.

The new Quotation and Parody Regulations amend section 30 of the CPDA by inserting section 30A which provides that fair dealing with a work for the purposes of caricature, parody or pastiche does not infringe copyright in the work. It also amends section 2 of Schedule 2 by adding a new section 2A which provides that fair dealing with a performance or a recording of a performance for the purposes of caricature, parody or pastiche does not infringe the rights conferred in the performance or recording.

The parody exception is already available in the US and used for programmes such as *The Daily Show with Jon Stewart*. Given the popularity and growth of the comedy entertainment market (and in particular satirical shows), British comedians and their parodies will no longer be left behind their US counterparts.

FOR MY EYES ONLY

The second new set of regulations, The Copyright and Rights in Performances (Personal Copies for Private Use) Regulations 2014 (the Private Use Regulations), extend the current regime on making personal copies of copyrighted work for private use.

The amendments insert a new section 28B into the CPDA which provides that the making of a copy of a work (other than a computer program) by an individual does not infringe copyright in the work provided that the copy is of the individual's own copy of the work (or a personal copy of the work made by the individual), it is made for the individual's private use and it is not made for any direct or indirect commercial ends. The new sections explain that an individual's "own copy" is a copy that has been lawfully acquired by the individual on a permanent basis, is not an infringing copy, and has not been made under any provision of the same Chapter of the CPDA which permits the making of a copy without infringing copyright. These changes mean that if an individual has bought (or been given as a gift) a CD, DVD or an e-book they can transfer it between their devices, or convert it from one format to another.

The meaning of "private use" is further explained in the new changes as including use facilitated by the making of a copy as a back-up copy, for the purposes of format-shifting, or for the purposes of storage. This is stated to include storage in an electronic storage area accessed by means of the internet which is accessible only by the individual and the person responsible for the storage area. This allows for storage in private online "cloud" facilities such as Dropbox.

However the new rights do have limits and the new section 28B provides that any personal copies must be destroyed if the individual transfers the work from which they were made to another person, unless the copyright owner authorises the transfer of the personal copies to that person. Any personal copy which is not so destroyed or is transferred to another person without the authorisation of the copyright owner will be an infringing copy.

Finally, the new Private Use Regulations also insert section 296ZEA which sets out a complaints procedure to the Secretary of State where the application of any technology, device or component prevents a copyright work from being copied or restricts the number of copies that can be made. The Secretary of State can direct the copyright owner to take steps to ensure that the individual can benefit from the new private copies for personal use provisions under section 28B.

These changes bring the law up to date with consumer habits in the digital age and the use of everyday household electronic products such as MP3 players which require users to take copies of the musical works of others.

A WELCOME CHANGE

The amendments to the CPDA under the two new regulations are to be welcomed. They show a legislator that is at pains to keep up with modern consumer habits and recognises the fast-changing landscapes of commercial entertainment and digital technology.

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