



# **EXPLORING FAIR DEALING AND FAIR USE IN NIGERIAN COPYRIGHT LAW: CONCEPTS AND IMPLICATIONS**



## INTRODUCTION

Copyright is gaining prominence in Nigeria due to its significant economic value. Its primary purpose is to safeguard the rights of copyright owners to benefit from their work, while also ensuring that users have the right to access and utilise these works. However, the focus often leans heavily toward protecting the rights of copyright owners, leading to the misconception that copyright universally prohibits all forms of copying or replication without exception. This is not entirely accurate, as copyright law recognises important exceptions, including the principles of fair dealing and fair use. The rapid advancement of technology and the public's growing demand for knowledge have driven the inclusion of these exceptions, as outlined in the Second Schedule of the Nigeria Copyright Act ("the NCA").<sup>1</sup> These exceptions not only protect copyright owners but also grant the public certain rights as users of copyrighted works. This reflects the evolution of copyright law in Nigeria and has expanded its scope. With these exceptions, copyright users can access a wider range of copyrighted materials, provided their use complies with legal requirements. Among these exceptions, the defence of fair dealing is particularly notable. It is one of the most significant exceptions in copyright law due to its broad scope and flexibility, encompassing many other exceptions.

This article explores the concepts of fair dealing and fair use within Nigerian copyright law and their implications, including how these doctrines balance the rights of creators with the public's need for access to information.

## THE DEFENCE OF FAIR DEALING AND FAIR USE

The doctrine of Fair Dealing is not rooted in any specific statutory enactment in common law but is a concept developed primarily through judicial precedents. It is essentially a judge-made principle. In *Hubbard v Vosper*,<sup>2</sup> Lord Denning noted that defining fair dealing is challenging, as it must be assessed on a case-by-case basis. Despite the uncertainty surrounding its precise definition, fair dealing is fundamentally based on the principle of fairness. It serves as a defence against copyright infringement, allowing the use of copyrighted material without the owner's permission in specific contexts.<sup>3</sup>

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<sup>1</sup> The Nigeria Copyright Act, 2022.

<sup>2</sup> (1972) 2 Q.B. 84.

<sup>3</sup> *ibid.*

In Nigeria, the doctrine of fair dealing is explicitly incorporated into the NCA. Section 20(1) of the NCA recognises fair dealing as a legal exception to copyright infringement, allowing the use of copyrighted material for purposes such as research, private study, criticism, review, or reporting current events, provided that it is done fairly. This ensures that users can engage with copyrighted works without violating copyright law under certain conditions.

While the terms “Fair Use” and “Fair Dealing” are sometimes used interchangeably, they are distinct concepts. Fair use is a broader and more flexible doctrine found primarily in the United States codified under Section 107 of the U.S. Copyright Act (“the U.S. Act”).<sup>4</sup> It permits the use of copyrighted works for purposes such as commentary, criticism, news reporting, teaching, scholarship, or research.

Despite this broader definition, users are not permitted to use an author's work indiscriminately without authorisation, as this would undermine the protection intended for creative works. If it can be demonstrated that the fair dealing defence is being used merely as a pretext to disregard the author's rights, the defence will not be upheld, as it is not intended to be misused or abused.

It is worth mentioning that NCA does not explicitly provide for fair use, but it does adopt fair dealing, which is more specific in scope. Both doctrines, however, aim to balance the protection of copyright owners' exclusive rights with the need to promote the dissemination of knowledge, creativity and public interest.

## **DISTINCTION BETWEEN FAIR USE AND FAIR DEALING**

Fair dealing has a narrower approach than fair use. While fair dealing is restricted to predefined purposes, fair use largely hinges on the doctrine of fairness, allowing for a broader range of unspecified purposes. Fair use is more flexible and can adapt to evolving circumstances, but this flexibility can also result in a lack of clarity and consistency in application.

One notable feature of both fair dealing and fair use is their subjective nature, as decisions are made on a case-by-case basis, taking into account the specific circumstances of each case. Courts evaluate several factors to determine whether the use of a copyrighted work falls under fair use or fair dealing:

- a. Nature of the use;
- b. The purpose of the use; whether it advances creativity;
- c. Nature of the copyrighted work;
- d. Whether or not it is a factual work; and
- e. The amount of the work used: This is to determine the substantiality of the portion that was used in respect of the copyrighted work, for instance, the number of words from a book, etc.

These factors are key in both the U.S. fair use analysis and in determining fair dealing in jurisdictions like Nigeria and the UK, although the latter tends to be more restrictive. Both fair dealing and fair use are relatively complex legal concepts. In cases of uncertainty, it is advisable to seek permission from the copyright owner before using their work. Consulting legal counsel can also provide guidance in determining whether a particular use qualifies as fair dealing or fair use, especially when the boundaries between legal and illegal usage are unclear.

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<sup>4</sup> Copyright Act of 1909, Pub. L. No. 60-349, § 5, 35 Stat. 1075, 1076.

## IMPORTANCE OF FAIR USE AND FAIR DEALING IN NIGERIA

One of the key implications of fair use and fair dealing is to ensure that copyrighted works can be used by the public for certain purposes, provided such use does not unfairly affect the rights of the copyright owner. In Nigeria, fair dealing plays a crucial role in balancing copyright protection with the public interest, fostering creativity, innovation, and education.

The importance of fair dealing in Nigeria can be seen through its impact on various sectors:

- 1. Fosters Educational Advancement:** Fair dealing allows the use of copyrighted works for educational purposes, including research, private study, and teaching. This promotes the transmission of knowledge and provides educators and students access to a wide range of materials without infringing on copyright. By doing so, fair dealing contributes to educational development and supports the public's right to learn.
- 2. Promotes Creativity and Innovation:** Fair dealing encourages creativity and innovation by permitting creatives to leverage on existing works for specified purposes, such as parody, satire, and criticism. By enabling creatives to build upon previous works without seeking permission, it fosters a culture of creative progress and innovation while maintaining respect for the original works.
- 3. Supports a Free Press:** In a democratic society, free press is a vital pillar of transparency and accountability. Fair dealing provisions allow journalists and news organisations to use copyrighted materials for reporting current events, promoting an informed citizenry. This fosters transparency and supports the media's role in disseminating information to the public.
- 4. Balances Copyright Protection with Public Interest:** While copyright protection ensures that creators benefit from their work, it must be balanced against the public's right to access information and engage in creative activities. Fair dealing provides this balance by preventing copyright from becoming an obstacle to learning, creativity, and cultural development.
- 5. Legal Clarity:** Clear fair dealing provisions within copyright law provide a legal framework that helps institutions, individuals, and creators understand their rights and responsibilities. By defining the scope of permissible use, fair dealing reduces legal ambiguity and helps users navigate copyright limitations while respecting the rights of copyright holders.

## CONCLUSION

Exploring fair dealing and fair use in Nigerian copyright law reveals the crucial role these doctrines play in balancing copyright protection with public interest. Fair dealing, as recognised in NCA, allows the use of copyrighted works for specific purposes, such as education, criticism, and news reporting, fostering creativity, innovation, and access to knowledge. While fair use offers broader flexibility, both principles aim to prevent copyright infringement while promoting societal advancement. As Nigeria's copyright law evolves, these exceptions remain vital in ensuring the equitable use of creative works while safeguarding the rights of copyright holders.

This article is to provide general guidance and information and does not in any way constitute legal advice. Should you require any legal advice or further assistance on the above, please contact:



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