

NEW AUSTRALIAN COPYRIGHT LAWS

PARODY AND SATIRE

New amendments allow fair dealings for parody and satire.

When can I undertake a fair dealing for parody and satire?

The new provisions (ss 41A and 103AA) apply where a person or organisation can demonstrate that their use of copyright material (both works and audio-visual subject matter) is a fair dealing for parody or satire.

They are similar to existing exceptions in the Act, which allow a fair dealing for criticism and review and for reporting the news.

What does 'fair dealing' mean?

Determining whether a use of copyright material is a 'fair dealing' requires a court to make an objective assessment of how and why the material has been used. While the new exceptions do not list factors for considering whether a dealing is 'fair', the circumstances a court may consider could include:

- whether the material is published or unpublished
- the nature of the material
- the nature of the use
- the possibility of obtaining permission from the rights holder, and
- whether there has been any impropriety in obtaining the material.

What is parody and satire?

The amendments do not define the terms which are similar and can overlap. Satire often involves attacking an idea or attitude, an institution or a social practice, through irony, derision, or wit. Parody often involves the imitation of the characteristic style of an author or a work for comic effect or ridicule.

When will the parody and satire exceptions apply?

The new exceptions will only be relevant where there is an alleged infringement of copyright. There may be many circumstances where no infringement of copyright arises (eg where a parody or satire takes only the 'idea' of a work, where less than a substantial part of a work is used, or the relevant work or subject-matter is not protected by copyright).

If a claim of copyright infringement arises from use of copyright material, a court would need to consider if the genuine, or real, purpose of the dealing was parody and satire rather than a pretence for some other purpose.

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