



COMMENTS OF THE LIBRARY COPYRIGHT ALLIANCE ON THE TRANSATLANTIC TRADE AND INVESTMENT PARTNERSHIP

The Library Copyright Alliance (LCA) consists of three major library associations—the American Library Association, the Association of College and Research Libraries, and the Association of Research Libraries—that collectively represent over 100,000 libraries in the United States employing over 350,000 librarians and other personnel.

LCA welcomes this opportunity to comment on the proposed Transatlantic Trade and Investment Partnership (TTIP). LCA has long been engaged in trade matters, submitting comments on many of the free trade agreements, TPP, and GATS.

At this preliminary stage, we offer a few brief recommendations. First, we strongly urge that the TTIP include provisions aimed at harmonizing public access to the results of government-funded research. In February of this year, John P. Holdren, Director of the White House’s Office of Science and Technology Policy, issued a memorandum directing federal research funding agencies with research and development budgets of \$100 million or more to develop a plan within six months to support increased public access to the results of research funded by the federal government. LCA supports this policy, which builds on the existing public access policy of the National Institutes of Health. The European Union has similar initiatives under way. TTIP offers an opportunity for the establishment of consistent approaches for public access in the two jurisdictions that provide the most public funding for research. This will accelerate the rate of innovation in many scientific fields, particularly medicine, to the benefit of people around the globe.

Second, we question the appropriateness of attempting to negotiate an intellectual property chapter in TTIP. The European Union generally provides higher levels of protection for copyright and related rights, including features that probably violate the U.S. Constitution. The Database Directive, for example, provides “sweat of the brow” protection for collections of facts, a theory the U.S. Supreme Court in *Feist v. Rural Telephone* found to be inconsistent with the Constitution’s intellectual property clause. The adoption of the Database Directive in the EU triggered a lengthy and heated debate in Congress, which ultimately decided not to adopt a sui generis regime. Although its own internal studies have shown that the Database Directive has failed from a policy perspective, the EU nonetheless in its free trade negotiations has demanded that its trading partners adopt the Database Directive. An IP chapter would provide the EU with an opportunity to attempt to impose the Database Directive on the United States. The EU might also attempt to require the U.S. to provide additional protection for moral rights, resale rights, broadcast rights, and geographical indicators.

Further, the Information Society Directive circumscribes the exceptions member states can adopt, and the laws of numerous EU member states contain features that require payment for activities that are free in the U.S. For instance, many European countries have a public lending right, under which libraries have to pay publishers an annual fee for

the right to lend books. By contrast, in the U.S., this activity is permitted under the first sale doctrine. European countries also have a complex system of compulsory licenses and duties, so that consumers in effect must pay to make copies allowed in the U.S. under the fair use doctrine. The EU could very well attempt to use the IP chapter as a means for rolling back exceptions such as fair use in the U.S. and fair dealing in three of its member states: the UK, Ireland, and Cyprus. The diminution of fair dealing could then be leveraged onto other countries, such as India. *See* attached Fair Use/Fair Dealing Handbook indicating the many countries with fair use or fair dealing provisions.

The overly solicitous attitude in the EU to rights holders comes as no surprise. It results in part from the Continental authors' rights tradition that views copyright as a natural right, in contrast to the utilitarian Anglo-Saxon approach where copyright is treated as a means of incentivizing authors to create. It also results in part from the lobbying power of rights holders in Europe. As the attached study demonstrates, many of the largest firms in IP intensive industries are European-owned.

Even if after a long negotiation the EU ultimately agrees on an IP chapter that does not require the U.S. to ratchet up protection, this concession on the part of the EU surely will come at a price. The U.S. will have to give the EU something it wants, either in the IP chapter or elsewhere in the agreement. Stated differently, the U.S. has nothing to gain and much to lose from an IP chapter in TTIP. The U.S. will be in a defensive posture, and will have to make concessions to the EU in order to maintain the status quo in the United States. Accordingly, TTIP should not address intellectual property.

We would be happy to discuss our views in greater detail.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'J. Band'.

Jonathan Band
Counsel for the Library Copyright Alliance
jband@policybandwidth.com

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The Fair Use/Fair Dealing Handbook

Jonathan Band

Jonathan Gerafi

policybandwidth

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INTRODUCTION

More than 40 countries with over one-third of the world's population have fair use or fair dealing provisions in their copyright laws. These countries are in all regions of the world and at all levels of development. The broad diffusion of fair use and fair dealing indicates that there is no basis for preventing the more widespread adoption of these doctrines, with the benefits their flexibility brings to authors, publishers, consumers, technology companies, libraries, museums, educational institutions, and governments. This is particularly the case considering that the copyright laws in many "civil law" countries currently allow their courts to apply a specific exception in a specific case only if second and third steps of the Berne three-step-test are met. That is, the court may permit the use only if it determines that the use does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the rights holder. These steps are at least as abstract and difficult to apply as fair use or fair dealing.

Fair dealing was first developed by courts in England in the eighteenth century, and was codified in 1911. In the UK legislation, an exception to infringement was provided for fair dealing with a work for the purposes of "private study, research, criticism, review, or newspaper summary." Fair dealing also became incorporated into copyright laws of the former British Imperial territories, now referred to as the Commonwealth countries. Over the past century, however, the fair dealing statutes have evolved in many of the Commonwealth countries. While in some countries fair dealing remains, as in the UK, restricted to the original purposes of the 1911 Act, in other countries these purposes have become a non-exclusive list of examples (*see, e.g.*, Bahamas). In still other countries, legislatures have added factors a court must consider in determining fair dealing (*see, e.g.*, Australia). Moreover, some countries have replaced the term "fair dealing" with "fair use" (*see, e.g.*, Bangladesh). Thus, the fair dealing statutes in many countries have over time increasingly resembled the fair use statute in the United States. (Additionally, judicial interpretations of fair dealing in countries such as Canada are now similar to judicial interpretations of fair use in the United States.)

Fair use in the United States is attributed to Justice Story's 1841 decision in *Folsom v. Marsh*, which was based on the English fair dealing case law. Congress codified fair use in the Copyright Act of 1976. Section 107 provides that fair use for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship and research is not an infringement of copyright. Section 107 then lists four factors that are to be included in the determination of whether the use made of a work in any particular case is a fair use. In other words, Section 107 sets forth non-exclusive purposes and non-exclusive factors for fair use. Although fair use is generally considered to be more flexible and open-ended than fair dealing, this, as discussed above, is no longer the case in many Commonwealth countries.

Countries that are not former British colonies, such as Taiwan and Korea, have also adopted fair use or fair dealing. Four former colonies, Botswana, Ghana, Lesotho, and Malawi, have replaced fair dealing with other exceptions.

This handbook contains the fair use and fair dealing statutes we were able to identify. Please contact jband@policybandwidth.com if we missed any. The handbook does not include the many implementations of the exceptions for quotations and illustration in Article 10 of the Berne Convention, which refers to "fair practice." Fair practice under Article 10 is a distinct concept from fair use or fair dealing. The handbook also does not include the myriad specific exceptions countries have enacted in addition to fair use or fair dealing. Finally, the handbook does not contain exceptions that appear to be inspired at least in part by fair use or fair dealing, but do not employ those terms.

ANTIGUA AND BARBUDA

The Copyright Act, 2003

PART III – MORAL RIGHTS

Objection to Treatment of Work

Right to object to derogatory treatment of work

15.

(1) Subject to subsections (2) and (3) and to such exceptions as may be specified in or pursuant to any other provision of this Act, the author of a literary dramatic, musical or artistic work that is a protected work and the director of a film that is a protected work have, respectively, the right not to have the work or any part thereof subjected to derogatory treatment, and such right is infringed by any person who does any of the acts specified in section 37 in the circumstances of so specified.

(2) The right does not apply in relation to—

- (a) a computer program or to a computer-generated work;
- (b) Fair dealing with any work made for the purpose of reporting current events....

PART V – INFRINGEMENT OF RIGHTS

Infringement of Moral Rights and Related Rights

Infringement of right to be identified as author or director

36.

(1) Subject to subsection (2), the right conferred by section 14 is infringed by any person who fails to identify the author of a work or the director of a film whenever any action specified in that section occurs in relation to that work or film.

(2) The following acts shall not constitute an infringement of the right conferred by section 14 in relation to a work to the extent that such acts are permitted under Part VI in relation to the work—

- (a) Fair dealing with the work for the purposes of criticism, review or the reporting of current events by means of a sound recording, film, broadcast or cable programme....

PART VI – EXCEPTIONS TO INFRINGEMENT OF COPYRIGHT

General Exceptions

Research and private study

52.

Subject to section 54, fair dealing with a literary, dramatic, musical or artistic work for the purposes of research or private study does not infringe copyright in the work or, in the case of a published edition, in the typographical arrangement.

Criticism, review and reporting

53.

(1) Subject to section 54—

- (a) Fair dealing with a protected work for the purposes of criticism or review of that or another work or of a performance of a work; or
 - (b) Fair dealing with a protected work (other than a photograph) for the purpose of reporting current events,
- does not infringe copyright in the work so long as it is accompanied by a sufficient acknowledgement.

Determining fair dealing

54.

For the purpose of determining whether an act done in relation to a work constitutes fair dealing, the court determining the question shall take account of all factors which appear to it to be relevant, including—

- (a) the nature of the work in question;
- (b) the extent and substantiality of that part of the work affected by the act in relation to the whole of the work;
- (c) the purpose and character of the use; and
- (d) the effect of the act upon the potential market for, or the commercial value of, the work.

PART IX – RIGHTS IN PERFORMANCES

Exceptions to Infringement

Fair dealing for criticism, etc.

116.

Fair dealing with a performance or recording—

- (a) for the purpose of criticism or review of that or another performance or recording, or of a work; or
 - (b) for the purpose of reporting current events,
- does not infringe any of the rights conferred by this Part, and the provisions of section 54 shall, with the necessary modifications, apply in determining whether or not an act constitutes fair dealing.

AUSTRALIA

Copyright Act, 1968

DIVISION 3 – ACTS NOT CONSTITUTING INFRINGEMENTS OF COPYRIGHT IN WORKS

Fair dealing for purpose of research or study

40.

(1) A **fair dealing** with a literary, dramatic, musical or artistic work, or with an adaptation of a literary, dramatic or musical work, for the purpose of research or study does not constitute an infringement of the copyright in the work. (1A) A **fair dealing** with a literary work (other than lecture notes) does not constitute an infringement of the copyright in the work if it is for the purpose of, or associated with, an approved course of study or research by an enrolled external student of an educational institution. (1B) In subsection (1A) the expression *lecture notes* means any literary work produced for the purpose of the course of study or research by a person lecturing or teaching in or in connection with the course of study or research.

(2) For the purposes of this Act, the matters to which regard shall be had, in determining whether a dealing with a literary, dramatic, musical or artistic work or with an adaptation of a literary, dramatic or musical work, being a dealing by way of reproducing the whole or a part of the work or adaptation, constitutes a **fair dealing** with the work or adaptation for the purpose of research or study include:

- (a) the purpose and character of the dealing;
- (b) the nature of the work or adaptation;
- (c) the possibility of obtaining the work or adaptation within a reasonable time at an ordinary commercial price;
- (d) the effect of the dealing upon the potential market for, or value of, the work or adaptation; and
- (e) in a case where part only of the work or adaptation is reproduced—the amount and substantiality of the part copied taken in relation to the whole work or adaptation.

(3) Despite subsection (2), a reproduction, for the purpose of research or study, of all or part of a literary, dramatic or musical work, or of an adaptation of such a work, contained in an article in a periodical publication is taken to be a **fair dealing** with the work or adaptation for the purpose of research or study.

(4) Subsection (3) does not apply if another article in the publication is also reproduced for the purpose of different research or a different course of study.

(5) Despite subsection (2), a reproduction, for the purpose of research or study, of not more than a reasonable portion of a work or adaptation that is described in an item of the table and is not contained in an article in a periodical publication is taken to be a **fair dealing** with the work or adaptation for the purpose of research or study. For this purpose, *reasonable portion* means the amount described in the item.

Fair dealing for purpose of criticism or review

41.

A fair dealing with a literary, dramatic, musical or artistic work, or with an adaptation of a literary, dramatic or musical work, does not constitute an infringement of the copyright in the work if it is for the purpose of criticism or review, whether of that work or of another work, and a sufficient acknowledgement of the work is made.

Fair dealing for purpose of parody or satire

41A.

A fair dealing with a literary, dramatic, musical or artistic work, or with an adaptation of a literary, dramatic or musical work, does not constitute an infringement of the copyright in the work if it is for the purpose of parody or satire.

Fair dealing for purpose of reporting news

42.

A fair dealing with a literary, dramatic, musical or artistic work, or with an adaptation of a literary, dramatic or musical work, does not constitute an infringement of the copyright in the work if:

- (a) it is for the purpose of, or is associated with, the reporting of news in a newspaper, magazine or similar periodical and a sufficient acknowledgement of the work is made; or
 - (b) it is for the purpose of, or is associated with, the reporting of news by means of a communication or in a cinematograph film.
- (2) The playing of a musical work in the course of reporting news by means of a communication or in a cinematograph film is not a fair dealing with the work for the purposes of this section if the playing of the work does not form part of the news being reported.

Reproduction for purpose of judicial proceedings or professional advice

43.

- (1) The copyright in a literary, dramatic, musical or artistic work is not infringed by anything done for the purposes of a judicial proceeding or of a report of a judicial proceeding.
- (2) A fair dealing with a literary, dramatic, musical or artistic work does not constitute an infringement of the copyright in the work if it is for the purpose of the giving of professional advice by:
 - (a) a legal practitioner; or
 - (b) a person registered as a patent attorney under the *Patents Act 1990*; or
 - (c) a person registered as a trade marks attorney under the *Trade Marks Act 1995*.

DIVISION 6 – INFRINGEMENT OF COPYRIGHT IN SUBJECT MATTER OTHER THAN WORKS

Fair dealing for purpose of criticism or review

103A.

A fair dealing with an audio-visual item does not constitute an infringement of the copyright in the item or in any work or other audio-visual item included in the item if it is for the purpose of criticism or review, whether of the first-mentioned audio-visual item, another audio-visual item or a work, and a sufficient acknowledgement of the first-mentioned audio-visual item is made.

Fair dealing for purpose of parody or satire

103AA.

A **fair dealing** with an audio-visual item does not constitute an infringement of the copyright in the item or in any work or other audio-visual item included in the item if it is for the purpose of parody or satire.

Fair dealing for purpose of reporting news

103B.

(1) A **fair dealing** with an audio-visual item does not constitute an infringement of the copyright in the item or in any work or other audio-visual item included in the item if:

- (a) it is for the purpose of, or is associated with, the reporting of news in a newspaper, magazine or similar periodical and a sufficient acknowledgement of the first-mentioned audio-visual item is made;
- (b) it is for the purpose of, or is associated with, the reporting of news by means of a communication or in a cinematograph film.

Fair dealing for purpose of research or study

103C.

(1) A **fair dealing** with an audio-visual item does not constitute an infringement of the copyright in the item or in any work or other audio-visual item included in the item if it is for the purpose of research or study.

(2) For the purposes of this Act, the matters to which regard shall be had in determining whether a dealing with an audio-visual item constitutes a **fair dealing** for the purpose of research or study include:

- (a) the purpose and character of the dealing;
- (b) the nature of the audio-visual item;
- (c) the possibility of obtaining the audio-visual item within a reasonable time at an ordinary commercial price;
- (d) the effect of the dealing upon the potential market for, or value of, the audio-visual item; and
- (e) in a case where part only of the audio-visual item is copied—the amount and substantiality of the part copied taken in relation to the whole item.

PART XIA – PERFORMERS’ PROTECTION

Interpretation

248A.

(1) In this Part: ... **exempt recording** means:

- (aa) an indirect sound recording of a performance, being a recording that is a **fair dealing** with the performance for the purpose of research or study; ...
- (fa) a direct or indirect sound recording of a performance, being a recording that is a **fair dealing** with the performance:
 - (i) for the purpose of criticism or review, whether of that performance or another performance; or
 - (ii) for the purpose of, or associated with, the reporting of news in a newspaper, magazine or similar periodical; or

(iii) for the purpose of, or associated with, the reporting of news by means of a communication or in a cinematograph film....

(1A) For the purposes of paragraph (aa) of the definition of *exempt recording*, in determining whether a recording is a **fair dealing** with a performance for the purpose of research or study, regard must be had to the following matters:

- (a) the purpose and character of the recording;
- (b) the nature of the performance;
- (c) the possibility of obtaining an authorised recording of the performance within a reasonable time at an ordinary commercial price;
- (d) the effect of the recording upon the potential market for, or the value of, authorised recordings of the performance;
- (e) if only part of the performance is recorded—the amount and substantiality of the part recorded when compared to the whole performance.

BAHAMAS

Copyright Cap. 323

PART III – MORAL RIGHTS AND RELATED RIGHTS

Objection to Treatment of Work of Visual Art

Right to derogatory treatment of work of visual art

12.

(1) Subject to subsection (3) and to such exceptions as may be specified in or pursuant to any other provision of this Act, the author of a work of visual art that is a protected work, has the right—

- (a) to prevent the use of his name as the author of the work of visual art in the event of derogatory treatment;
- (b) to prevent any destruction of his work which is of recognised stature;
- (c) not to have the work or any part thereof subjected to derogatory treatment, and any such right is infringed by any person who does any of the acts specified in section 46 in the circumstances so specified.

(3) The rights conferred by subsection (1) shall not apply in relation to—

- (a) a computer program or to a computer-generated work;
- (b) **fair dealing** with any work made for the purposes specified in section 60....

PART VI – INFRINGEMENT OF RIGHTS

Remedies for Copyright Owner

Action owner of copyright

41.

(3) The damages referred to in subsection (2) are as follows—...

- (d) the court shall remit statutory damages in any case where an infringer believed that his use of the copyright work was a **fair dealing** under section 60, if the infringer was an employee or agent of a non-profit educational establishment, public library, or Department of Archives acting within the scope of his employment who, or such institution, library, or archives itself which, infringed by reproducing the work in copies or phonorecords.

Infringement of Moral Rights and Related Rights

Infringement of right identified as the author

45.

(1) Subject to subsection (2), the right conferred by section 11 is infringed by any person who fails to identify the author of a work whenever any action specified in that section occurs in relation to that work.

(2) The following acts shall not constitute an infringement of the right conferred by section 11 in relation to a work to the extent that such acts are permitted under Part VII in relation to the work—

- (a) **fair dealing** with the work for the purposes of criticism, review or the reporting of current events....

PART VII – EXCEPTIONS TO INFRINGEMENT OF COPYRIGHT

General Exceptions

Research and private study and teaching

58.

(1) Subject to section 60, **fair dealing** with a copyright work, including such use by reproduction in copies or phonorecords for purposes such as research, private study, scholarship or teaching does not infringe copyright in the work.

(2) For the purposes of subsection (1), teaching shall mean instruction at an educational establishment.

Criticism, review and reporting

59.

(1) Subject to section 60, **fair dealing** with a protected work—

(a) for purposes of criticism, comment, parody or review; or

(b) for the purpose of reporting current events,

does not infringe copyright in the work so long as it is accompanied by sufficient acknowledgement.

(2) No acknowledgement is required in connection with the reporting of current events by means of a sound recording or audiovisual work.

*Determining **fair dealing***

60.

For the purpose of determining whether an act done in relation to a work constitutes **fair dealing**, the court determining the question shall take account of all factors which appear to it to be relevant, including—

(a) the nature of the work in question;

(b) the amount and substantiality of that part of the work affected by the act in relation to the whole of the work;

(c) the purpose and character of the use, including whether such use is of a commercial nature or is for non-profit educational purposes; and

(d) the effect of the act upon the potential market for, or the commercial value of, the work.

PART X – RIGHTS IN LIVE PERFORMANCES

Exceptions to Infringement

Permitted acts in relation to performances

105.

Notwithstanding the rights in performances conferred in this Part, any act done in relation to a copy or phonorecord in circumstances specified hereunder does not constitute an infringement of the rights.

Fair dealing for criticism

106.

Fair dealing with a copy or phonorecord of a performance—

(a) for the purpose of criticism or review of that or another copy or phonorecord of a performance, or of a work; or

(b) for the purpose of reporting current events,

does not infringe any of the rights conferred by this Part, and the provisions of section 60 shall, with the necessary modifications, apply in determining whether or not an act constitutes **fair dealing**.

BANGLADESH

Copyright Act 2000 No. 28 of 2000

Certain acts not to be infringement of copyright

72.

(1) The following acts shall not constitute an infringement of copyright, namely:

- (a) Fair use of a literary, dramatic, musical or artistic work for the purpose of—
 - (i) private study or private use including research;
 - (ii) criticism or review, whether of that work or of any other work;
- (b) Fair use of a literary, dramatic, musical or artistic work for the purpose of reporting current events—
 - (i) in a newspaper, magazine or similar periodical, or
 - (ii) by broadcast or in a cinematographic work or by means of photograph....

Explanation

The publication of a compilation of addresses or speeches delivered in public is not a fair dealing of such work within the meaning of this clause.

BARBADOS

Copyright Act, Cap. 300

PART II – MORAL RIGHTS AND RELATED RIGHTS

Objection to Treatment of Work

Right to object to derogatory treatment of work

15.

(1) Subject to subsections (2) and (3) and to such exceptions as may be specified in or pursuant to any other provision of this Act, the author of a literary, dramatic, musical or artistic work that is a protected work and the director of a film that is a protected work have, respectively, the right not to have the work or any part thereof subjected to derogatory treatment; and such right is infringed by any person who does any of the acts specified in section 37 in the circumstances so specified.

(2) The right referred to in subsection (1) does not apply in relation to

- (a) a computer programme or to a computer-generated work;
- (b) **fair dealing** with any work made for the purpose of reporting current events.

Infringement of Moral Rights and Related Rights

Infringement of right to be identified as author or director

36.

(1) Subject to subsection (2), the right conferred by section 14 is infringed by any person who fails to identify the author of a work or the director of a film whenever any action specified in that section occurs in relation to that work or film.

(2) The following acts do not constitute an infringement of the right conferred by section 14 in relation to a work to the extent that such acts are permitted under Part V in relation to the work:

- (a) **fair dealing** with the work for the purposes of criticism, review or the reporting of current events by means of a sound recording, film, broadcast or cable programme....

PART V – EXCEPTIONS TO INFRINGEMENT OF COPYRIGHT

General exceptions

51.

Subject to section 53, **fair dealing** with a literary, dramatic, musical or artistic work for the purposes of research or private study does not infringe copyright in the work or, in the case of a published edition, in the typographical arrangement.

Criticism, review and reporting

52.

(1) Subject to section 53,

- (a) **fair dealing** with a protected work for the purposes of criticism or review of that or another work or of a performance of a work; and
 - (b) **fair dealing** with a protected work, other than a photograph, for the purpose of reporting current events,
- does not infringe copyright in the work if it is accompanied by a sufficient acknowledgment.

*Determining **fair dealing***

53.

For the purpose of determining whether an act done in relation to a work constitutes **fair dealing**, the court determining the question shall take account of all factors that appear to it to be relevant, including

- (a) the nature of the work in question;
- (b) the extent and portion of that part of the work affected by the act in relation to the whole of the work;
- (c) the purpose and character of the use; and
- (d) the effect of the act upon the potential market for, or the commercial value of, the work.

PART VIII – RIGHTS IN PERFORMANCE

Exceptions to Infringement

***Fair dealing** criticism etc.*

115.

Fair dealing with a performance or recording

- (a) for the purpose of criticism or review of that or another performance or recording, or of a work; or
 - (b) for the purpose of reporting current events,
- does not infringe any of the rights conferred by this Part, and the provisions of section 53 shall, with the necessary modifications, apply in determining whether or not an act constitutes **fair dealing**.

PART III – MORAL RIGHTS AND RELATED RIGHTS

Objection to Treatment of Work

Right to object to derogatory treatment of work

16.

(1) Subject to the provisions in this Part, and in particular to section 24, the author of a literary, dramatic, musical or artistic work that is a protected work and the director of a film that is a protected work shall have, respectively, the right not to have the work subjected to derogatory treatment; and such right is infringed by any person who does any of the acts specified in section 42 or section 43 in the circumstances there specified.

(3) The right referred to in subsection (1) does not apply in relation to—

- (a) a computer program or to a computer-generated work;
- (b) **fair dealing** with any work made for the purpose of reporting current events....

PART VI – EXCEPTIONS TO INFRINGEMENT OF COPYRIGHT

General Exceptions

Research and private study

56.

(1) Subject to subsection (2) and section 58, **fair dealing** with a protected work for the purposes of research or private study does not infringe copyright in the work.

(2) Copying by a person other than the researcher or student himself is not **fair dealing** if—

- (a) in the case of a librarian, or a person acting on behalf of a **librarian**, he does anything which Regulations under section 66 would not permit to be done under section 67 or 68 (articles or parts of published works; restriction on multiple copies of same material); or
- (b) in any other case, the person doing the copying knows or has reason to believe that it will result in copies of substantially the same material being provided to more than one person at substantially the same time and for substantially the same purpose.

Criticism, review and reporting

57.

(1) Subject to section 58, **fair dealing** with a work for the purpose of criticism or review, of that or another work or of a performance of a work, does not infringe any copyright in the work provided it is accompanied by a sufficient acknowledgement.

(2) Subject to subsection (3) and section 58, **fair dealing** with a protected work (other than a photograph) for the purpose of reporting current events does not infringe copyright in the work so long as it is accompanied by a sufficient acknowledgement.

Determining fair dealing

58.

For the purpose of determining whether an act done in relation to a work constitutes fair dealing, the court determining the question shall take account of all factors which appear to it to be relevant, including—

- (a) the nature of the work in question;
- (b) the extent and substantiality of that part of the work affected by the act in relation to the whole of the work;
- (c) the effect of the act upon the potential market for, or the commercial value of, the work; and
- (d) the purpose and character of the use.

PART VIII – RIGHTS IN PERFORMANCES

Exceptions to Infringement of Rights Conferred under this Part

Fair dealing for criticism, etc.

124.

Fair dealing with a performance or recording—

- (a) for the purpose of criticism or review, of that or another performance or recording, or of a work; or
 - (b) for the purpose of reporting current events,
- does not infringe any of the rights conferred by this Part, and the provisions of section 58 shall, with the necessary modifications, apply in determining whether or not an act constitutes fair dealing.

CHAPTER III – ACTS PERMITTED IN RELATION TO COPYRIGHT WORKS

General

Research and private study

33.

- (1) Fair dealing with a literary, dramatic, musical or artistic work for the purpose of research or private study does not infringe any copyright in the work or, in the case of a published edition, in the typographical arrangement.
- (2) Fair dealing with the typographical arrangement of a published edition for the purpose mentioned in subsection (1) does not infringe any copyright in the arrangement.
- (3) Copying by a person, other than the researcher or student himself, is not fair dealing if—
 - (a) in the case of a librarian, or a person acting on behalf of a librarian, he does anything which regulations under section 44 would not permit to be done under sections 42 or 43; or
 - (b) in any other case, the person doing the copying knows or has reason to believe that it will result in copies of substantially the same material being provided to more than one person at substantially the same time and for substantially the same purpose.

Criticism, reviews and news reporting

34.

- (1) Fair dealing with a work for the purpose of criticism or review, of that or another work or of a performance of a work, does not infringe any copyright in the work provided that it is accompanied by a sufficient acknowledgement.
- (2) Fair dealing with a work (other than a photograph) for the purpose of reporting current events does not infringe any copyright in the work provided that, subject to subsection (3), it is accompanied by a sufficient acknowledgement.
- (3) No acknowledgement is required in connection with the reporting of current events by means of a sound recording, film, broadcast or cable programme.

CANADA

Copyright Act (R.S.C., 1985, c. C-42)

PART III – INFRINGEMENT OF COPYRIGHT AND MORAL RIGHTS AND EXCEPTIONS TO INFRINGEMENT

Exceptions

Fair dealing

Research, private study, etc.

29.

Fair dealing for the purpose of research, private study, education, parody or satire does not infringe copyright.

Criticism or review

29.1

Fair dealing for the purpose of criticism or review does not infringe copyright if the following are mentioned:

- (a) the source; and
- (b) if given in the source, the name of the
 - (i) author, in the case of a work,
 - (ii) performer, in the case of a performer's performance,
 - (iii) maker, in the case of a sound recording, or
 - (iv) broadcaster, in the case of a communication signal.

News reporting

29.2

Fair dealing for the purpose of news reporting does not infringe copyright if the following are mentioned:

- (a) the source; and
- (b) if given in the source, the name of the
 - (i) author, in the case of a work,
 - (ii) performer, in the case of a performer's performance,
 - (iii) maker, in the case of a sound recording, or
 - (iv) broadcaster, in the case of a communication signal.

CYPRUS

The Copyright Laws 1976 to 1993

Nature of copyright in literary, musical or artistic works and cinematograph films

7.

(1) Copyright in a scientific, literary, musical or artistic work or a cinematograph film or photograph shall consist in the exclusive right to control the doing in the Republic of any of the following acts: the reproduction in any form, sale, rental, distribution, lending, advertising, exhibiting in public, the communication to the public, the broadcasting, the translation, adaptation and any other arrangement, of the whole work or a substantial part thereof:

Provided that copyright in any such work shall not include the right to control—

(a) the doing of any of the aforesaid acts by way of **fair dealing** for purposes of research, private use, criticism or review, or the reporting of current events, on condition that, if such use is made in public, it shall be accompanied by an acknowledgement of the title of the work and its authorship, except where the work is incidentally included in a broadcast....

PART I – WORKS PROTECTED

Expression of folklore protected

8.

(1) Expression of folklore is protected by copyright under this Act against

- (a) reproduction;
- (b) communication to the public by performance, broadcasting, distribution by cable or other means; and
- (c) adaptation, translation and other transformation, when the expression is made either for commercial purposes or outside a traditional or customary context.

(2) The protection conferred in subsection (1) does not include the right to control

- (a) the doing of any of the acts by way of **fair dealing** for private and domestic use, subject to the condition that, if the use is public, it shall be accompanied by an acknowledgement of the title of the work and its source...

Programme-carrying signals

14.

Copyright in programme-carrying signals is the exclusive right to prevent the distribution in The Gambia or from The Gambia of any signals by any distributor for whom those signals were not intended by their author, but it is not an infringement of the right of the author,

- (a) the reproduction in any material form, the communication to the public or the broadcasting of the whole signal or a substantial part of it, either in its original form or in any form recognisably derived from the original by way of **fair dealing** for the purpose of scientific research, private use, criticism or review or the reporting of current events....

PART VI – EXCEPTIONS

Acts which do not constitute infringement

34.

(2) The following acts do not constitute an infringement of copyright or neighbouring rights:

(a) **fair dealing** with a protected work, production, performance or edition for purposes of research or private study;

(b) **fair dealing** with a protected work, production, performance or edition for purposes of criticism or review, whether of that or any other work, production, performance or edition, and accompanied by a sufficient acknowledgement;

(c) **fair dealing** with a protected work, production, performance or edition for the purpose of reporting current events

(i) in a newspaper, magazine or similar periodical, if accompanied by a sufficient acknowledgement; or

(ii) by broadcasting, by communication by cable or by the use of an audio-visual production;

(4) For the purpose of determining whether an act in relation to a protected work, production, performance or edition constitutes **fair dealing**, a court determining the question shall take account of all factors which appear to it to be relevant, including—

(a) the nature of the work, production, performance or edition in question;

(b) the purpose and character of the act, and in particular whether the act is of a commercial nature;

(c) the extent and substantiality of that part of the work, production, performance or edition affected by the act in relation to the whole of the work, production, performance or edition;

(d) the effect of the act upon the potential market for, or the commercial value of, the work, production, performance or edition.

PART I – COPYRIGHT IN ORIGINAL WORK

General exceptions from protection of literary, dramatic and musical works

6.

- (1) No **fair dealing** with a literary, dramatic or musical general work for purposes of research or private study shall constitute exceptions an infringement of the copyright in the work.
- (2) No **fair dealing** with a literary, dramatic or musical work shall constitute an infringement of the copyright in the work if it is for purposes of criticism or review, whether of that work or of another work, and is accompanied by a sufficient acknowledgment.
- (3) No **fair dealing** with a literary, dramatic or musical work shall constitute an infringement of the copyright in the work if it is for the purpose of reporting current events
 - (a) in a newspaper, magazine or similar periodical, or
 - (b) by means of broadcasting, or in a cinematograph film, and, in a case falling within paragraph (a) of this subsection, is accompanied by a sufficient acknowledgment.

General exceptions from protection of artistic works

9.

- (1) No **fair dealing** with an artistic work for purposes of research or private study shall constitute an infringement of the copyright in the work.
- (2) No **fair dealing** with an artistic work shall constitute a infringement of the copyright in the work if it is for purposes of criticism or review, whether of that work or of another work, and is accompanied by a sufficient acknowledgment.

PART II – ACTS PERMITTED IN RELATION TO COPYRIGHT WORKS

General

Research and private study

38.

- (1) **Fair dealing** with a work for the purposes of research or private study does not infringe any copyright in the work or, in the case of a published edition, in the typographical arrangement.
- (2) Copying by a person other than the researcher or student himself is not **fair dealing** if—
- (a) in the case of a librarian, or a person acting on behalf of a librarian, he does anything which regulations under section 49 would not permit to be done under section 47 or 48 (articles or parts of published works: restriction on multiple copies of same material); or
 - (b) in any other case, the person doing the copying knows or has reason to believe that it will result in copies of substantially the same material being provided to more than one person at substantially the same time and for substantially the same purpose.
- (3) In determining whether any dealing with a work is **fair dealing** under subsection (1), the court shall take into account all the circumstances of the case and, in particular—
- (a) the purpose and nature of the dealing, including whether the dealing is for a non-profit-making purpose and whether the dealing is of a commercial nature;
 - (b) the nature of the work;
 - (c) the amount and substantiality of the portion dealt with in relation to the work as a whole; and
 - (d) the effect of the dealing on the potential market for or value of the work.

Criticism, review and news reporting

39.

- (1) **Fair dealing** with a work for the purpose of criticism or review, of that or another work or of a performance of a work, if it is accompanied by a sufficient acknowledgement, does not infringe any copyright in the work or, in the case of a published edition, in the typographical arrangement.
- (2) **Fair dealing** with a work for the purpose of reporting current events, if (subject to subsection three) it is accompanied by a sufficient acknowledgement, does not infringe any copyright in the work.
- (3) No acknowledgement is required in connection with the reporting of current events by means of a sound recording, film, broadcast or cable programme.

Fair Dealing for Purposes of Giving or Receiving Instruction

Education

41A.

- (1) **Fair dealing** with a work by or on behalf of a teacher or by a pupil for the purposes of giving or receiving instruction in a specified course of study provided by an educational establishment does not infringe the copyright in the work or, in the case of a published edition, in the typographical arrangement.

- (2) In determining whether any dealing with a work is **fair dealing** under subsection (1), the court shall take into account all the circumstances of the case and, in particular—
- (a) the purpose and nature of the dealing, including whether the dealing is for a non-profit-making purpose and whether the dealing is of a commercial nature;
 - (b) the nature of the work;
 - (c) the amount and substantiality of the portion dealt with in relation to the work as a whole; and
 - (d) the effect of the dealing on the potential market for or value of the work.
- (3) Where any dealing with a work involves the inclusion of any passage or excerpt from a published literary or dramatic work in an anthology—
- (a) if the inclusion is not accompanied by a sufficient acknowledgement, the dealing is not **fair dealing** under subsection (1); and
 - (b) if the inclusion is accompanied by a sufficient acknowledgement, subsection (2) applies in determining whether the dealing is **fair dealing** under subsection (1).
- (4) Where any dealing with a work involves the making of a recording of a broadcast or cable programme or a copy of such a recording—
- (a) if an acknowledgement of authorship or other creative effort contained in the work recorded is not incorporated in the recording, the dealing is not **fair dealing** under subsection (1); and
 - (b) if an acknowledgement of authorship or other creative effort contained in the work recorded is incorporated in the recording, subsection (2) applies in determining whether the dealing is **fair dealing** under subsection (1).
- (5) Where any dealing with a work involves the making available of copies of the work through a wire or wireless network wholly or partly controlled by an educational establishment—
- (a) if the educational establishment fails to—
 - (i) adopt technological measures to restrict access to the copies of the work through the network so that the copies of the work are made available only to persons who need to use the copies of the work for the purposes of giving or receiving instruction in the specified course of study in question or for the purposes of maintaining or managing the network; or
 - (ii) ensure that the copies of the work are not stored in the network for a period longer than is necessary for the purposes of giving or receiving instruction in the specified course of study in question or, in any event, for a period longer than 12 consecutive months, the dealing is not **fair dealing** under subsection (1); and
 - (b) if the educational establishment—
 - (i) adopts technological measures to restrict access to the copies of the work through the network so that the copies of the work are made available only to persons who need to use the copies of the work for the purposes of giving or receiving instruction in the specified course of study in question or for the purposes of maintaining or managing the network; and
 - (ii) ensures that the copies of the work are not stored in the network for a period longer than is necessary for the purposes of giving or receiving instruction in the specified course of study in question or, in any event, for a period longer than 12 consecutive months, subsection (2) applies in determining whether the dealing is **fair dealing** under subsection (1).
- (6) Without affecting the generality of section 37(5), where any dealing with a work involves the making of reprographic copies, the fact that the making of the copies does not fall within section 45 does not mean that it is not covered by this section, and subsection (2) applies in determining whether the dealing is **fair dealing** under subsection (1).
- (7) Where a copy which apart from this section would be an infringing copy is made in accordance with this section but is subsequently dealt with, it is to be treated as an infringing copy—
- (a) for the purpose of that dealing; and
 - (b) if that dealing infringes copyright, for all subsequent purposes.
- (8) In subsection (7), "dealt with" (被用以進行交易) means sold, let for hire, or offered or exposed for sale or hire.

Fair Dealing for Purposes of Public Administration

Public administration

54A.

- (1) Fair dealing with a work by the Government, the Executive Council, the Judiciary or any District Council for the purposes of efficient administration of urgent business does not infringe the copyright in the work or, in the case of a published edition, in the typographical arrangement.
- (2) In determining whether any dealing with a work is fair dealing under subsection (1), the court shall take into account all the circumstances of the case and, in particular—
- (a) the purpose and nature of the dealing, including whether the dealing is for a non-profit-making purpose and whether the dealing is of a commercial nature;
 - (b) the nature of the work;
 - (c) the amount and substantiality of the portion dealt with in relation to the work as a whole; and
 - (d) the effect of the dealing on the potential market for or value of the work.
- (3) Where a copy which apart from this section would be an infringing copy is made in accordance with this section but is subsequently dealt with, it is to be treated as an infringing copy—
- (a) for the purpose of that dealing; and
 - (b) if that dealing infringes copyright, for all subsequent purposes.
- (4) In subsection (3), "dealt with" (被用以進行交易) means sold, let for hire, or offered or exposed for sale or hire.

Exceptions to right

91.

- (1) The right conferred by section 89 (right to be identified as author or director) is subject to the following exceptions.
- (4) The right is not infringed by an act which by virtue of any of the following provisions would not infringe copyright in the work—
- (a) section 39 (fair dealing for certain purposes), so far as it relates to the reporting of current events by means of a sound recording, film, broadcast or cable programme....

Criticism, review and news reporting

241.

- (1) Fair dealing with a performance or fixation—
- (a) for the purpose of criticism or review, of that or another performance or fixation, or of a work; or
 - (b) for the purpose of reporting current events,
- does not infringe any of the rights conferred by this Part.

Fair dealing for purposes of giving or receiving instruction

242A.

- (1) Fair dealing with a performance or fixation by or on behalf of a teacher or by a pupil for the purposes of giving or receiving instruction in a specified course of study provided by an educational establishment does not infringe any of the rights conferred by this Part.
- (2) In determining whether any dealing with a performance or fixation is fair dealing under subsection (1), the court shall take into account all the circumstances of the case and, in particular—

- (a) the purpose and nature of the dealing, including whether the dealing is for a non-profit-making purpose and whether the dealing is of a commercial nature;
 - (b) the nature of the performance or fixation;
 - (c) the amount and substantiality of the portion dealt with in relation to the performance or fixation as a whole; and
 - (d) the effect of the dealing on the potential market for or value of the performance or fixation.
- (3)** Where a fixation which apart from this section would be an infringing fixation is made in accordance with this section but is subsequently dealt with, it is to be treated as an infringing fixation—
- (a) for the purpose of that dealing; and
 - (b) if that dealing infringes any of the rights conferred by this Part, for all subsequent purposes.
- (4)** Where any dealing with a fixation involves the making available of copies of the fixation through a wire or wireless network wholly or partly controlled by an educational establishment—
- (a) if the educational establishment fails to—
 - (i) adopt technological measures to restrict access to the copies of the fixation through the network so that the copies of the fixation are made available only to persons who need to use the copies of the fixation for the purposes of giving or receiving instruction in the specified course of study in question or for the purposes of maintaining or managing the network; or
 - (ii) ensure that the copies of the fixation are not stored in the network for a period longer than is necessary for the purposes of giving or receiving instruction in the specified course of study in question or, in any event, for a period longer than 12 consecutive months, the dealing is not **fair dealing** under subsection (1); and
 - (b) if the educational establishment—
 - (i) adopts technological measures to restrict access to the copies of the fixation through the network so that the copies of the fixation are made available only to persons who need to use the copies of the fixation for the purposes of giving or receiving instruction in the specified course of study in question or for the purposes of maintaining or managing the network; and
 - (ii) ensures that the copies of the fixation are not stored in the network for a period longer than is necessary for the purposes of giving or receiving instruction in the specified course of study in question or, in any event, for a period longer than 12 consecutive months, subsection (2) applies in determining whether the dealing is **fair dealing** under subsection (1).

Fair dealing for purposes of public administration

246 A.

- (1)** **Fair dealing** with a performance or fixation by the Government, the Executive Council, the Judiciary or any District Council for the purposes of efficient administration of urgent business does not infringe any of the rights conferred by this Part.
- (2)** In determining whether any dealing with a performance or fixation is **fair dealing** under subsection (1), the court shall take into account all the circumstances of the case and, in particular—
 - (a) the purpose and nature of the dealing, including whether the dealing is for a non-profit-making purpose and whether the dealing is of a commercial nature;
 - (b) the nature of the performance or fixation;
 - (c) the amount and substantiality of the portion dealt with in relation to the performance or fixation as a whole; and
 - (d) the effect of the dealing on the potential market for or value of the performance or fixation.
- (3)** Where a fixation which apart from this section would be an infringing fixation is made in accordance with this section but is subsequently dealt with, it is to be treated as an infringing fixation—

- (a) for the purpose of that dealing; and
- (b) if that dealing infringes any of the rights conferred by this Part, for all subsequent purposes.

Exceptions to right under section 272B

272D.

(1) The right conferred by section 272B (right to be identified as performer) does not apply where it is not reasonably practicable to identify the performer.

(4) The right is not infringed by an act which by virtue of any of the following provisions would not infringe any right conferred by Part III—

(a) section 241 (**fair dealing** for certain purposes), insofar as it relates to the reporting of current events by means of a sound recording, broadcast or cable programme....

INDIA

Copyright Act, 1957

CHAPTER VIII – RIGHTS OF BROADCASTING ORGANISATION AND OF PERFORMERS

Acts not infringing broadcast reproduction right or performer's right

39.

No broadcast reproduction right or performer's right shall be deemed to be infringed by—

- (a) the making of any sound recording or visual recording for the private use of the person making such recording, or solely for purposes of bona fide teaching or research; or
- (b) the use, consistent with **fair dealing**, of excerpts of a performance or of a broadcast in the reporting of current events or for bona fide review, teaching or research; or
- (c) such other acts, with any necessary adaptations and modifications, which do not constitute infringement of copyright under section 52.

CHAPTER XI – INFRINGEMENT OF COPYRIGHT

Certain acts not to be infringement of copyright

52.

(1) The following acts shall not constitute an infringement of copyright, namely:

- (a) a **fair dealing** with a literary, dramatic, musical or artistic work, not being a computer programme, for the purposes of—
 - (i) private use, including research;
 - (ii) criticism or review, whether of that work or of any other work;
- (aa) the making of copies or adaptation of a computer programme by the lawful possessor of a copy of such computer programme, from such copy—
 - (i) in order to utilise the computer programme for the purpose for which it was supplied; or
 - (ii) to make back-up copies purely as a temporary protection against loss, destruction or damage in order only to utilise the computer programme for the purpose for which it was supplied;
- (ab) the doing of any act necessary to obtain information essential for operating interoperability of an independently created computer programme with other programmes by a lawful possessor of a computer programme provided that such information is not otherwise readily available;
- (ac) the observation, study or test of functioning of the computer programme in order to determine the ideas and principles which underline any elements of the programme while performing such acts necessary for the functions for which the computer programme was supplied;
- (ad) the making of copies or adaptation of the computer programme from a personally legally obtained copy for non-commercial personal use;
- (b) a **fair dealing** with a literary, dramatic, musical or artistic work for the purpose of reporting current events—
 - (i) in a newspaper, magazine or similar periodical, or
 - (ii) by broadcast or in a cinematograph film or by means of photographs.

CHAPTER 6 – ACTS PERMITTED IN RELATION TO WORKS PROTECTED BY COPYRIGHT

Fair Dealing: research or private study

50.

- (1) **Fair dealing** with a literary, dramatic, musical or artistic work, sound recording, film, broadcast, cable programme, or non-electronic original database, for the purposes of research or private study, shall not infringe any copyright in the work.
- (2) **Fair dealing** with a typographical arrangement of a published edition for the purposes of research or private study shall not infringe any copyright in the arrangement.
- (3) The copying by a person, other than the researcher or private student, is not **fair dealing** where—
 - (a) in the case of a librarian or archivist, he or she does anything which is not permitted under section 63, or
 - (b) in any other case, the person copying knows or has reason to believe that the copying will result in copies of substantially the same material being provided to more than one person at approximately the same time and for substantially the same purpose.
- (4) In this Part, “**fair dealing**” means the making use of a literary, dramatic, musical or artistic work, film, sound recording, broadcast, cable programme, non-electronic original database or typographical arrangement of a published edition which has already been lawfully made available to the public, for a purpose and to an extent which will not unreasonably prejudice the interests of the owner of the copyright.
- (5) In this Part, the following acts are not **fair dealing**—
 - (a) converting a computer program expressed in a low level computer language into a version expressed in a higher level computer language, or
 - (b) copying a computer program in an incidental manner in the course of converting that program.

Fair dealing: criticism or review

51.

- (1) **Fair dealing** with a work for the purposes of criticism or review of that or another work or of a performance of a work shall not infringe any copyright in the work where the criticism or review is accompanied by a sufficient acknowledgement.
- (2) **Fair dealing** with a work (other than a photograph) for the purpose of reporting current events shall not infringe copyright in that work, where the report is accompanied by a sufficient acknowledgement.
- (3) In this Part, “sufficient acknowledgement” means an acknowledgement identifying the work concerned by its title or other description and identifying the author unless—
 - (a) in the case of a work which has been lawfully made available to the public, it was so made available anonymously, or
 - (b) in the case of a work which has not been made available to the public, it is not possible for a person without previous knowledge of the facts to ascertain the identity of the author of the work by reasonable enquiry.

CHAPTER 4 – ACTS PERMITTED IN RELATION TO PERFORMANCES

Exemptions in respect to performances

221.

- (1) Fair dealing with a performance or recording for the purposes of criticism or review, of that or another recording, or of a work, or for the purpose of reporting current events, shall not infringe any of the rights conferred by this Part.
- (2) In this Part “fair dealing” means the making use of a performance or a recording which has been lawfully made available to the public for a purpose and to an extent which will not unreasonably prejudice the interests of the rightsowner.

CHAPTER 8 – ACTS PERMITTED IN RESPECT OF DATABASE RIGHT

Fair dealing: research and private study

329.

- (1) The database right in a non-electronic database which has been re-utilised is not infringed by fair dealing with a substantial part of its contents by a lawful user of the database where that part is extracted for the purposes of research or private study.
- (2) For the purposes of this Part “fair dealing” means the extraction of the contents of a database by a lawful user to an extent which will not unreasonably prejudice the interests of the rights owner.

Education

Exemption for educational establishments

330.

- (1) The database right in a database is not infringed by fair dealing with a substantial part of its contents by a lawful user of the database where that part is extracted for the purposes of illustration in the course of instruction or of preparation for instruction and where—
 - (a) the extraction is done by or on behalf of a person giving or receiving instruction, and
 - (b) the source is indicated.
- (2) For the purposes of this section “lawful user” includes an educational establishment.

CHAPTER FOUR – PERMITTED USES

Fair Use

19.

(a) Fair use of a work is permitted for purposes such as: private study, research, criticism, review, journalistic reporting, quotation, or instruction and examination by an educational institution. (b) In determining whether a use made of a work is fair within the meaning of this section the factors to be considered shall include, inter alia, all of the following:

- (1) The purpose and character of the use;
- (2) The character of the work used;
- (3) The scope of the use, quantitatively and qualitatively, in relation to the work as a whole;
- (4) The impact of the use on the value of the work and its potential market. (c) The Minister may make regulations prescribing conditions under which a use shall be deemed a fair use.

JAMAICA

The Copyright Act, 1993

PART III – MORAL RIGHTS AND RELATED RIGHTS

Objection to Treatment of Work

Right to object to derogatory treatment of work

15.

(1) Subject to subsections (2) and (3) and to such exceptions as may be specified in or pursuant to any other provision of this Act, the author of a literary, dramatic, musical or artistic work that is a protected work and the director of a film that is a protected work have, respectively, the right not to have the work or any part thereof subjected to derogatory treatment; and such right is infringed by any person who does any of the acts specified in section 37 in the circumstances so specified.

(2) The right does not apply in relation to—

- (a) a computer program or to a computer-generated work;
- (b) **fair dealing** with any work made for the purpose of reporting current events....

PART V – INFRINGEMENT OF RIGHTS

Infringement of Moral Rights and Related Rights

Infringements of right to be identified as author or director

36.

(1) Subject to subsection (2), the right conferred by section 14 is infringed by any person who fails to identify the author of a work or the director of a film whenever any action specified in that section occurs in relation to that work or film.

(2) The following acts shall not constitute an infringement of the right conferred by section 14 in relation to a work to the extent that such acts are permitted under Part VI in relation to the work—

- (a) **fair dealing** with the work for the purposes of criticism, review or the reporting of current events by means of a sound recording, film, broadcast or cable programme....

PART VI – EXCEPTIONS TO INFRINGEMENT OF COPYRIGHT

General Exceptions

Research and private study

52.

Subject to section 54, **fair dealing** with a literary, dramatic, musical or artistic work for the purposes of research or private study does not infringe copyright in the work or, in the case of a published edition, in the typographical arrangement.

Criticism, review and reporting

53.

(1) Subject to section 54—

(a) **fair dealing** with a protected work for the purposes of criticism or review of that or another work or of a performance of a work; and

(b) **fair dealing** with a protected work (other than a photograph) for the purpose of reporting current events,
does not infringe copyright in the work so long as it is accompanied by a sufficient acknowledgement.

(2) No acknowledgement is required in connection with the reporting of current events by means of a sound recording, film, broadcast or cable programme.

*Determining **fair dealing***

54.

For the purpose of determining whether an act done in relation to a work constitutes **fair dealing**, the court determining the question shall take account of all factors which appear to it to be relevant, including—

(a) the nature of the work in question;

(b) the extent and substantiality of that part of the work affected by the act in relation to the whole of the work;

(c) the purpose and character of the use; and

(d) the effect of the act upon the potential market for, or the commercial value of, the work.

PART IX – RIGHTS IN PERFORMANCES

Exceptions to Infringement

***Fair dealing** for criticism, etc.*

116.

Fair dealing with a performance or recording—

(a) for the purpose of criticism or review of that or another performance or recording, or of a work; or

(b) for the purpose of reporting current events,

does not infringe any of the rights conferred by this Part, and the provisions of section 54 shall, with the necessary modifications, apply in determining whether or not an act constitutes **fair dealing**.

PART III – COPYRIGHT AND OTHER RELATED RIGHTS

Nature of copyright in literary, musical or artistic works and audio-visual works

26.

(1) Copyright in a literary, musical or artistic work or audio-visual work shall be the exclusive right to control the doing in Kenya of any of the following acts, namely the reproduction in any material form of the original work or its translation or adaptation, the distribution to the public of the work by way of sale, rental, lease, hire, loan, importation or similar arrangement, and the communication to the public and the broadcasting of the whole work or a substantial part thereof, either in its original form or in any form recognisably derived from the original; but copyright in any such work shall not include the right to control—

(a) the doing of any of those acts by way of **fair dealing** for the purposes of scientific research, private use, criticism or review, or the reporting of current events subject to acknowledgement of the source.

(3) Copyright of a computer program shall not constitute **fair dealing** for the purposes of paragraph (a) of subsection (1). ...

KIRIBATI

Copyright Ordinance (Cap 16)

Kiribati applies the Copyright Act 1956 of England (*see* United Kingdom, *infra*).¹

¹ <http://www.wipo.int/wipolex/en/details.jsp?id=11424>

KOREA

Framework Act on Intellectual Property

CHAPTER I – GENERAL PROVISIONS

Article 2 (basic principles)

The Government shall promote policies related to intellectual property according to the following basic principles:

1. To promote the creation of excellent intellectual property by encouraging creators of intellectual property, such as writers, inventors, technicians, and artists to engage in their activities creatively and stably;
2. To protect intellectual property in an effective and stable manner, promote the utilization and the reasonable and fair use thereof;
3. To build up foundations to promote the creation, protection and utilization of intellectual property by promoting the social environment that values intellectual property and fostering professional human resources and related industries;
4. To contribute to the common development of the international community by bringing harmony between domestic norms and international norms on intellectual property and supporting the strengthening of intellectual property-related aptitude of developing countries.

CHAPTER II – FORMULATION OF POLICIES FOR INTELLECTUAL PROPERTY AND PROMOTION SYSTEM THEREOF

Article 8 (formulation of master plan for national intellectual property)

- (1) The Government shall, every five years, formulate a master plan for national intellectual property that defines the objectives of and basic direction-setting for mid-term and long-term policies concerning intellectual property (hereinafter referred to as "master plan") in order to achieve the objectives of this Act in an efficient manner.
- (2) Where the Government intends to formulate or change a master plan, it shall confirm the master plan after deliberation by the Council and announce the same officially without delay: Provided, That this shall not apply to cases where the Government intends to change insignificant matters prescribed by Presidential Decree.
- (3) A master plan shall include the following matters:
 1. The objectives of and basic direction-setting for policies for intellectual property;
 2. Strategies for the creation, protection and utilization of intellectual property and new intellectual property;
 3. A plan for strengthening abilities of industrial circles, academic circles, research circles, cultural and artistic circles, etc. to create intellectual property;
 4. Matters concerning the protection of intellectual property of nationals of the Republic of Korea in foreign countries (including corporations or organizations established in accordance with the law of the Republic of Korea; hereinafter the same shall apply);
 5. A plan for preventing danger and harm to the security of the people, etc. due to an infringement on intellectual property;
 6. A plan for the fair use of intellectual property;

SECTION 3 – PROMOTION OF UTILIZATION OF INTELLECTUAL PROPERTY

*Article 28 (establishment of order in **fair use** of intellectual property)*

- (1) The Government shall endeavor to promote the **fair use** of intellectual property and to prevent any abuse of intellectual property rights.
- (2) The Government shall take necessary measures so that intellectual property created by joint efforts may be distributed fairly among the persons concerned.
- (3) The Government shall prevent unfair transactions of intellectual property between large companies and small and medium enterprises, and promote mutual cooperation.

Copyright Act, 2011

***Fair use** of works²*

35–3.

- (1) Other than the cases stipulated from Article 23 to Article 35–2, Article 101–3 to Article 101–5 it shall be permissible to use works for purposes such as news reporting, criticism, education, or research which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder.
- (2) The following four factors must be considered in determining whether a particular use is fair:
 1. the purpose and character of the use, including whether such use is of commercial nature or is for nonprofit purposes;
 2. the nature of the copyrighted work;
 3. amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
 4. the effect of the use upon the actual and potential market or value of the copyrighted work.

² Unofficial translation. The phrase “other than” in subsection (1) probably means “in addition to.” Adopted on December 2, 2011.

Limitation of exclusive rights: fair use

2.7.

Notwithstanding the provisions of Section 2.6, the **Fair use** of a copyright work, including such use by reproduction in copies or sound recordings or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a **fair use**, the factors to be considered shall include:

- (a) the purpose and character of the use, including whether such use is of a commercial nature or is for non-profit educational purposes;
- (b) the nature of the copyright work;
- (c) the amount and substantially of the portion used In relation to the copyrighted work as a whole; and
- (d) the effect of the use upon the potential market for or value of the work.

This Section does not include the reproduction of a computer program which is provided for in Section 2.14.

MALAYSIA

Copyright Act, 2012

PART II – GENERAL PROVISIONS

Copyright in published editions of works

9.

(4) Reproduction of the typographical arrangement of a published edition for the purposes of research, private study, criticism, review or the reporting of current events does not infringe the copyright subsisting by virtue of this section if such reproduction is compatible with **fair dealing**: Provided that if such reproduction is made public it is accompanied by an acknowledgement of the title of the work and its authorship, except where the work is incidentally included in a broadcast.

(6) The Government, the National Archives, or any State Archives, the National Library, or any State library, or any public libraries and educational, scientific or professional institutions as the Minister may by order prescribe, may reproduce the typographical arrangement of a published edition without infringing the copyright subsisting by virtue of this section if such reproduction is in the public interest and is compatible with **fair dealing** and the provisions of any regulations.

PART III – NATURE AND DURATION OF COPYRIGHT

Nature of copyright in literary, musical or artistic works, films and sound recordings

13.

(2) Notwithstanding subsection (1), the right of control under that subsection does not include the right to control

(a) the doing of any of the acts referred to in subsection (1) by way of **fair dealing** including for purposes of research, private study, criticism, review or the reporting of news or current events: Provided that it is accompanied by an acknowledgement of the title of the work and its authorship, except that no acknowledgment is required in connection with the reporting of news or current events by means of a sound recording, film or broadcast;

(2a) For the purposes of paragraph (2)(a), in determining whether a dealing constitutes a **fair dealing**, the factors to be considered shall include:

(a) the purpose and character of the dealing, including whether such dealing is of a commercial nature or is for non-profit educational purposes;

(b) the nature of the copyright work;

(c) the amount and substantiality of the portion used in relation to the copyright work as a whole; and

(d) the effect of the dealing upon the potential market for or value of the copyright work.

MYANMAR

The Burma Copyright Act

Rights

2.

(1) Copyright in a work shall be deemed to be infringed by any person who, without the consent of the owner of the copyright, does anything the sole right to do which is by this Act conferred on the owner of the copyright:

Provided that the following acts shall not constitute an infringement of copyright:

(i) Any **fair dealing** with any work for the purposes of private study, research, criticism, review, or newspaper summary....

NAMIBIA

Copyrights and Neighboring Rights Protection Act 6 of 1994

PART I – PROTECTION OF COPYRIGHT

General exceptions regarding protection of literary and musical works

15.

(1) Copyright shall not be infringed by a **fair dealing** in the use of a literary or musical work—

(a) for the purpose of research or private study by, or the personal or private use of, the person using the work;

(b) for the purpose of criticism or review of the work or of another work; or

(c) for the purpose of reporting on a current event—

(i) in a newspaper, magazine or similar periodical; or

(ii) by means of broadcasting or in a cinematograph film, provided, in the case of paragraphs (b) and (c)(i), the source and the name of the author, if that name appears on the work, are mentioned.

NAURU

Custom and Adopted Laws Act 1971

Nauru applies the 1956 Copyright Act of England (see United Kingdom *infra*).³

³ <http://www.wipo.int/wipolex/en/details.jsp?id=8033>

PART 3 – ACTS PERMITTED IN RELATION TO COPYRIGHT WORKS

Criticism, review, and news reporting

42.

- (1) Fair dealing with a work for the purposes of criticism or review, of that or another work or of a performance of a work, does not infringe copyright in the work if such fair dealing is accompanied by a sufficient acknowledgement.
- (2) Fair dealing with a work for the purposes of reporting current events by means of a sound recording, film, broadcast, or cable programme does not infringe copyright in the work.
- (3) Fair dealing with a work (other than a photograph) for the purposes of reporting current events by any means other than those referred to in subsection (2) of this section does not infringe copyright in the work if such fair dealing is accompanied by a sufficient acknowledgement.

Research or private study

43.

- (1) Fair dealing with a work for the purposes of research or private study does not infringe copyright in the work.
- (2) For the avoidance of doubt, it is hereby declared that fair dealing with a published edition for the purposes of research or private study does not infringe copyright in either the typographical arrangement of the edition or any literary, dramatic, musical, or artistic work or part of a work in the edition.
- (3) In determining, for the purposes of subsection (1) of this section, whether copying, by means of a reprographic process or by any other means, constitutes fair dealing for the purposes of research or private study, a court shall have regard to—
 - (a) The purpose of the copying; and
 - (b) The nature of the work copied; and
 - (c) Whether the work could have been obtained within a reasonable time at an ordinary commercial price; and
 - (d) The effect of the copying on the potential market for, or value of, the work; and
 - (e) Where part of a work is copied, the amount and substantiality of the part copied taken in relation to the whole work.
- (7) This section does not authorise the making of more than 1 copy of the same work, or the same part of a work, on any one occasion, but in this subsection **copy** does not include a non-infringing transient reproduction to which section 43A applies.

PART 9 – PERFORMERS’ RIGHTS

Permitted acts in relation to performances, criticism, reviews, and news reporting

176.

Fair dealing with a performance or recording

(a) For the purposes of criticism or review, of that or another performance or recording, or of a work; or

(b) For the purposes of reporting current events,

does not infringe any of the rights conferred by this Part of this Act.

NIGERIA

Copyright Act (Chapter C.28)

PART II – NEIGHBOURING RIGHTS

Protection of expressions of folklore

31.

(1) Expressions of folklore are protected against-

- (a) reproduction;
- (b) communication to the public by performance, broadcasting, distribution by cable or other means;
- (c) adaptations, translations and other transformations, when such expressions are made either for commercial purposes or outside their traditional or customary context.

(2) The right conferred in subsection (1) of this section shall not include the right to control-

- (a) the doing of any of the acts by way of **fair dealing** for private and domestic use, subject to the condition that, if the use is public, it shall be accompanied by an acknowledgement of the title of the work and its source....

SECTION 6(1) – SCHEDULES – FIRST SCHEDULE

Exceptions from copyright control

The right conferred in respect of a work by section 6 of this Act does not include the right to control—

- (a) the doing of any of the acts mentioned in the said section 6 by way of **fair dealing** for purposes of research, private use, criticism or review or the reporting of current events, subject to the condition that, if the use is public, it shall be accompanied by an acknowledgement of the title of the work and its authorship except where the work is incidentally included in a broadcast....

PAKISTAN

The Copyright Ordinance, 1962

CHAPTER XII – INFRINGEMENT OF COPYRIGHT

Certain acts not to be infringement of copyright

57.

(1) The following acts shall not constitute an infringement of copyright, namely:

(a) a **fair dealing** with a literary, dramatic, musical or artistic work for the purpose of—

(i) research or private study;

(ii) criticism or review, whether of that work or of any other work;

(b) a **fair dealing** with a literary, dramatic, musical or artistic work for the purpose of reporting current events—

(i) in a newspaper, magazine or similar periodical, or

(ii) by broadcast or in a cinematographic work or by means of photographs....

Explanation

For the purposes of clause (a) or clause (b) of this subsection—

(i) in relation to a literary or dramatic work in prose, a single extract up to four hundred words, or a series of extracts (with comments interposed) up to a total of eight hundred words with no one extract exceeding three hundred words; and

(ii) in relation to a literary or dramatic work in poetry, an extract or extracts up to a total of forty lines and in no case exceeding one-fourth of the whole of any poem, may be deemed to be **fair dealing** with such work: Provided that in a review of a newly published work reasonably longer extracts may be deemed **fair dealing** with such work.

PHILIPPINES

Intellectual Property Code of the Philippines

CHAPTER VIII – LIMITATIONS ON COPYRIGHT

Limitations on copyright

184.1.

Notwithstanding the provisions of Chapter V, the following acts shall not constitute infringement of copyright:

(e) The inclusion of a work in a publication, broadcast, or other communication to the public, sound recording or film, if such inclusion is made by way of illustration for teaching purposes and is compatible with **fair use**: *Provided* that the source and the name of the author, if appearing in the work, are mentioned;

(h) The use made of a work by or under the direction or control of the Government, by the National Library or by educational, scientific or professional institutions where such use is in the public interest and is compatible with **fair use**....

Fair use of a copyrighted work

185.1.

The **fair use** of a copyrighted work for criticism, comment, news reporting, teaching including multiple copies for classroom use, scholarship, research, and similar purposes is not an infringement of copyright. Decompilation, which is understood here to be the reproduction of the code and translation of the forms of the computer program to achieve the inter-operability of an independently created computer program with other programs may also constitute **fair use**. In determining whether the use made of a work in any particular case is **fair use**, the factors to be considered shall include:

(a) The purpose and character of the use, including whether such use is of a commercial nature or is for non-profit education purposes;

(b) The nature of the copyrighted work;

(c) The amount and substantiality of the portion used in relation to the copyrighted work as a whole; and

(d) The effect of the use upon the potential market for or value of the copyrighted work.

185.2.

The fact that a work is unpublished shall not by itself bar a finding of **fair use** if such finding is made upon consideration of all the above factors.

CHAPTER XV – LIMITATIONS ON PROTECTION

Limitations on Rights

212.

Sections 203, 208 and 209 shall not apply where the acts referred to in those Sections are related to:

212.4.

Fair use of the broadcast subject to the conditions under section 185.

SAINT CHRISTOPHER AND NEVIS

Copyright Act, 2002

PART III – MORAL RIGHTS AND RELATED RIGHTS

Objection to Treatment of Work

Right to object to derogatory treatment of work

15.

(1) Subject to subsections (2) and (3) of this section and such exceptions as may be specified in this section or pursuant to any other provision of this Act, the author of a literary, dramatic, musical or artistic work that is a protected work and the director of a film that is a protected work shall have, respectively, the right not to have the work or any part thereof subjected to derogatory treatment, and such right shall be infringed by any person who does any of the acts specified in section 37 of this Act in the circumstances specified in that section.

(2) The right referred to in subsection (1) of this section shall not apply in relation to

- (a) a computer programme or to a computer-generated work;
- (b) fair dealing with any work made for the purpose of reporting current events....

PART V – INFRINGEMENT OF RIGHT

Infringement of Moral Rights and Related Rights

Infringement of right to be identified as author or director

36.

(1) Subject to subsection (2) of this section, the right conferred by section 14 of this Act is infringed by a person who fails to identify the author of a work or the director of a film whenever any action specified in that section occurs in relation to that work or film.

(2) The following acts shall not constitute an infringement of the right conferred by section 14 of this Act in relation to a work to the extent that such acts are permitted under Part VI of this Act in relation to the work:

- (a) fair dealing with the work for the purposes of criticism, review or the reporting of current events by means of a sound recording, film, broadcast or cable programme....

PART VI – EXCEPTIONS TO INFRINGEMENT OF COPYRIGHT

General Exceptions

Research and private study

52.

Subject to section 54 of this Act, fair dealing with a literary, dramatic, musical or artistic work for the purposes of research or private study does not infringe copyright in the work or, in the case of a published edition, in the typographical arrangement.

Criticism, review and reporting

53.

(1) Subject to section 54 of this Act, Laws of Saint Christopher *Copyright Act* Cap 18.08 43 and Nevis Revision Date: 31 Dec 2002

(a) **fair dealing** with a protected work for the purposes of criticism or review of that or another work or of a performance of a work; or

(b) **fair dealing** with a protected work, other than a photograph, for the purpose of reporting current events,

does not infringe copyright in the work so long as it is accompanied by a sufficient acknowledgment.

(2) No acknowledgment shall be required in connection with the reporting of current events by means of a sound recording, film, broadcast or cable programme.

*Determining **fair dealing***

54.

For the purpose of determining whether an act done in relation to a work constitutes **fair dealing**, the court determining the question shall take into account all factors which appear to it to be relevant, including

(a) the nature of the work in question;

(b) the extent and substantiality of that part of the work affected by the act in relation to the whole of the work;

(c) the purpose and character of the use; and

(d) the effect of the act upon the potential market for, or the commercial value of, the work.

PART VIII – RIGHTS IN PERFORMANCE

Exceptions to Infringement

***Fair dealing** for criticism, etc.*

118.

Fair dealing with a performance or recording

(a) for the purpose of criticism or review of that or another performance or recording, or of a work; or

(b) for the purpose of reporting current events;

shall not infringe any of the rights conferred by this Part, and the provisions of section 54 of this Act shall, with the necessary modifications, apply in determining whether or not an act constitutes **fair dealing**.

SAINT LUCIA

Copyright Act of 1995

PART VI – EXCEPTIONS TO INFRINGEMENTS OF COPYRIGHT

General Exceptions

Research and private study

56.

(1) Subject to subsection (2) and section 58, **fair dealing** with a protected work for the purposes of research or private study does not infringe copyright in the work.

(2) Copying by a person other than the researcher or student himself is not **fair dealing** if—

(a) in the case of a librarian, or a person acting on behalf of a librarian, he does anything which regulations under section 68 would not permit to be done under section 69 or 70 (articles or parts of published works: restriction on multiple copies of same material); or

(b) in any other case, the person doing the copying knows or has reason to believe that it will result in copies of substantially the same material being provided to more than one person at substantially the same time and for substantially the same purpose.

Criticism, review and reporting

57.

(1) Subject to section 58, **fair dealing** with a work for the purpose of criticism or review, of that or another work or of a performance of a work, does not infringe any copyright in the work provided it is accompanied by a sufficient acknowledgement.

(2) Subject to subsection (3) and section 58, **fair dealing** with a protected work (other than a photograph) for the purpose of reporting current events does not infringe copyright in the work so long as *it* is accompanied by a sufficient acknowledgement.

(3) No acknowledgement is required in connection with the reporting of current events by means of a sound recording, film, broadcast or cable programme.

*Determining **fair dealing***

58.

For the purpose of determining whether an act done in relation to a work constitutes **fair dealing**, the court determining the question shall take account of all factors which appear to it to be relevant, including—

(a) the nature of the work in question;

(b) the extent and substantiality of that part of the work affected by the act in relation to the whole of the work;

(c) the effect of the act upon the potential market for or the commercial value of the work.

PART VII – COPYRIGHT LICENSING

Exceptions to Infringement of Rights Conferred under this Part

Fair dealing for criticism, etc.

127.

Fair dealing with a performance or recording—

(a) for the purpose of criticism or review, of that or another performance or recording, or of a work; or

(b) for the purpose of reporting current events,

does not infringe any of the rights conferred by this Part, and the provisions of section 58 shall, with the necessary modifications, apply in determining whether or not an act constitutes **fair dealing**.

SAINT VINCENT AND THE GRENADINES

Copyright Act, 2003

PART V – INFRINGEMENT OF RIGHTS

Moral and Related Rights

Infringement of right to be identified as author or director

34.

(1) Subject to subsection (2), the right conferred by section 13 is infringed by any person who fails to identify the author of a work or the director of a film whenever any action specified in that section occurs in relation to that work or film.

(2) The following acts shall not constitute an infringement of the right conferred by section 13 in relation to a work to the extent that such acts are permitted under Part VI in relation to the work—

(a) **fair dealing** with the work for the purposes of criticism, review or the reporting of current events by means of a sound recording, film, broadcast or cable programme....

PART VI – EXCEPTIONS TO INFRINGEMENT OF COPYRIGHT

General Exceptions

Research and private study

50.

(1) Subject to section 52, **fair dealing** with a literary, dramatic, musical or artistic work for the purposes of research or private study does not infringe copyright in the work or, in the case of a published edition, in the typographical arrangement.

(2) Copyright by a person other than the researcher or student himself is not **fair dealing** if—

(a) in the case of a librarian, or a person acting on behalf of a librarian he does anything which regulations, would not permit to be done under section 62(a) or 63(1)(b);

(b) in any other case, the person doing the copyright knows or has reason to believe it will result in copies of substantially the same material being provided to more than one person at substantially the same time for substantially the same purpose.

Criticism, review and reporting

51.

(1) Subject to section 52 **fair dealing** with a work for the purposes of criticism or review, of that or another work or of a performance of a work, does not infringe any copyright in the work provided it is accompanied by a sufficient acknowledgement.

(2) Subject to section 53(3), **fair dealing** with a protected work other than a photograph, for the purpose of reporting current events does not infringe copyright in the work so long as it is accompanied by a sufficient acknowledgement.

(3) No acknowledgement is required in connection with the reporting of current events by means of a sound recording, film, broadcast or cable programme.

Determining fair dealing

52.

For the purpose of determining whether an act done in relation to a work constitutes fair dealing, the Court in determining the question shall take account of all factors which appear to it to be relevant, including—

- (a) the nature of the work in question;
- (b) the extent and substantiality of that part of the work affected by the act in relation to the whole of the work;
- (c) the purpose and character of the use; and
- (d) the effect of the act upon the potential market for or the commercial value of the work.

PART VIII – RIGHTS IN PERFORMANCES

Exceptions to Infringement

Fair dealing for criticism, etc.

110.

Fair dealing with a performance or recording—

- (a) for the purpose of criticism or review of that or another performance or recording, or of a work; or
 - (b) for the purpose of reporting current events,
- does not infringe any of the rights conferred by this Part, and the provisions of section 57 shall, with the necessary modifications, apply in determining whether or not an act constitutes fair dealing.

SEYCHELLES

Copyright Act, Chapter 51

SCHEDULE 1

Acts not controlled by copyright

Fair dealing for the purpose of

- (a) private use;
- (b) research;
- (c) review or criticism; or
- (d) reporting of current events, if any public use of the work is accompanied by an acknowledgment of its title and authorship.

SIERRA LEONE

Copyright Act, 2011

PART II – COPYRIGHT

9.

(1) An expression of folklore is protected by copyright under this Act against

- (a) reproduction;
- (b) communication to the public by performance, broadcasting, distribution by cable or other means; and
- (c) adaptation, translation and other transformation, when the expression is made either for commercial purposes or outside a traditional or customary context.

(2) The protection conferred in subsection (1) does not include the right to control

- (a) the doing of any of the acts by way of fair dealing for private and domestic use, subject to the condition that, if the use is public, it shall be accompanied by an acknowledgement of the title of the work and its source....

14.

Copyright in programme-carrying signals is the exclusive right to prevent the distribution in Sierra Leone or from Sierra Leone of any signals by any distributor for whom those signals were not intended by their author; but it shall not be an infringement of the right of the author where the use of the signal involves

- (a) the reproduction in any material form the communication to the public and the broadcasting of the whole signal or a substantial part of it, either in its original form or in any form recognizably derived from the original by way of fair dealing for the purpose of scientific research, private use, criticism or review or the reporting of current events....

DIVISION 3 – ACTS NOT CONSTITUTING INFRINGEMENTS OF COPYRIGHT WORKS

Fair dealing in relation to works

35.

(1) Subject to this section, a **fair dealing** with a literary, dramatic, musical or artistic work, or with an adaptation of a literary, dramatic or musical work, for any purpose other than a purpose referred to in section 36 or 37 shall not constitute an infringement of the copyright in the work.

(1A) The purposes for which a dealing with a literary, dramatic, musical or artistic work, or with an adaptation of a literary, dramatic or musical work, may constitute a **fair dealing** under subsection (1) shall include research and study.

(2) For the purposes of this Act, the matters to which regard shall be had, in determining whether a dealing with a literary, dramatic, musical or artistic work or with an adaptation of a literary, dramatic or musical work, being a dealing by way of copying the whole or a part of the work or adaptation, constitutes a **fair dealing** with the work or adaptation for any purpose other than a purpose referred to in section 36 or 37 shall include—

(a) the purpose and character of the dealing, including whether such dealing is of a commercial nature or is for non-profit educational purposes;

(b) the nature of the work or adaptation;

(c) the amount and substantiality of the part copied taken in relation to the whole work or adaptation;

(d) the effect of the dealing upon the potential market for, or value of, the work or adaptation; and

(e) the possibility of obtaining the work or adaptation within a reasonable time at an ordinary commercial price.

(3) Notwithstanding subsection (2), a dealing with a literary, dramatic or musical work, or with an adaptation of such a work, being a dealing by way of the copying, for the purposes of research or study—

(a) if the work or adaptation comprises an article in a periodical publication, of the whole or a part of that work or adaptation; or

(b) in any other case, of not more than a reasonable portion of the work or adaptation, shall be taken to be a **fair dealing** with that work or adaptation for the purpose of research or study.

(4) Subsection (3) shall not apply to a dealing by way of the copying of the whole or a part of an article in a periodical publication if another article in that publication, being an article dealing with a different subject-matter, is also copied.

Fair dealing for purpose of criticism or review

36.

A **fair dealing** with a literary, dramatic, musical or artistic work, or with an adaptation of a literary, dramatic or musical work, shall not constitute an infringement of the copyright in the work if it is for the purpose of criticism or review, whether of that work or of another work, and a sufficient acknowledgment of the work is made.

Fair dealing for purpose of reporting current events

37.

A **fair dealing** with a literary, dramatic, musical or artistic work, or with an adaptation of a literary, dramatic or musical work, shall not constitute an infringement of the copyright in the work if it is for the purpose of, or is associated with, the reporting of current events—

- (a) in a newspaper, magazine or similar periodical and a sufficient acknowledgment of the work is made; or
- (b) by means of broadcasting or a cable programme service or in a cinematograph film.

DIVISION 6 – INFRINGEMENT OF COPYRIGHT IN SUBJECT-MATTER OTHER THAN WORKS

Fair dealing in relation to other subject-matter

109.

(1) Subject to this section, a **fair dealing** with an audio-visual item for any purpose other than a purpose referred to in section 110 or 111 shall not constitute an infringement of the copyright in the item or in any work or other audio-visual item included in the item.

(2) The purposes for which a dealing with an audio-visual item may constitute a **fair dealing** under subsection (1) shall include research and study.

(3) For the purposes of this Act, the matters to which regard shall be had, in determining whether a dealing with an audio-visual item, being a dealing by way of copying the whole or a part of the audio-visual item, constitutes a **fair dealing** with the audio-visual item for any purpose other than a purpose referred to in section 110 or 111 shall include—

- (a) the purpose and character of the dealing, including whether such dealing is of a commercial nature or is for non-profit educational purposes;
- (b) the nature of the audio-visual item;
- (c) the amount and substantiality of the part copied taken in relation to the whole audio-visual item;
- (d) the effect of the dealing upon the potential market for, or value of, the audio-visual item; and
- (e) the possibility of obtaining the audio-visual item within a reasonable time at an ordinary commercial price.

Fair dealing for purpose of criticism or review

110.

A **fair dealing** with an audio-visual item shall not constitute an infringement of the copyright in the item or in any work or other audio-visual item included in the item if it is for the purpose of criticism or review, whether of the first-mentioned audio-visual item, another audio-visual item or a work, and a sufficient acknowledgment of the first-mentioned audio-visual item is made.

Fair dealing for purpose of reporting news

111.

A **fair dealing** with an audio-visual item shall not constitute an infringement of the copyright in the item or in any work or other audio-visual item included in the item if—

- (a) it is for the purpose of, or is associated with, the reporting of news in a newspaper, magazine or similar periodical and a sufficient acknowledgment of the first-mentioned audio-visual item is made; or
- (b) it is for the purpose of, or is associated with, the reporting of news by means of broadcasting or a cable programme service, by any other means of communication to the public, or in a cinematograph film.

SOLOMON ISLANDS

Copyright Act 1987

PART II – COPYRIGHTS IN LITERARY, DRAMATIC, MUSICAL AND ARTISTIC WORKS

General Exceptions

7.

(1) The copyright subsisting in any literary, dramatic, musical or artistic work by virtue of this Part is not infringed by—

(a) any fair dealing with the work for purposes of research or private study; or

(b) any fair dealing with the work for purposes of criticism or review whether of that work or of another work, if that dealing is accompanied by a sufficient acknowledgement; or

(c) reproducing the work for the purposes of a judicial proceeding, or for the purposes of a report of a judicial proceeding.

(2) The copyright subsisting in any literary, dramatic or musical work by virtue of this Part is not infringed by—

(a) any fair dealing with the work for the purpose of reporting current events in a newspaper, magazine or similar periodical, if that dealing is accompanied by a sufficient acknowledgement; or

(b) any fair dealing with the work for the purpose of reporting current events by means of broadcasting, or in a cinematograph film.

SOUTH AFRICA

Copyright Act of 1978

CHAPTER 1 – COPYRIGHT IN ORIGINAL WORK (SS 2-22)

General Exceptions from Protection of Literary and Musical Works

12.

- (1) Copyright shall not be infringed by any **fair dealing** with a literary or musical work—
- (a) for the purposes of research or private study by, or the personal or private use of, the person using the work;
 - (b) for the purposes of criticism or review of that work or of another work; or
 - (c) for the purpose of reporting current events—
 - (i) in a newspaper, magazine or similar periodical; or
 - (ii) by means of broadcasting or in a cinematograph film; Provided that, in the case of paragraphs (b) and (c)(i), the source shall be mentioned, as well as the name of the author if it appears on the work.

Copyright

Fair use

11.

(1) Notwithstanding the provisions of subsection (1) of section 9, the **fair use** of a work, including such use by reproduction in copies or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship or research, shall not be an infringement of copyright.

(2) The following factors shall be considered in determining whether the use made of a work in any particular case is **fair use**:

(a) the purpose and character of the use, including whether such use is of a commercial nature or is for non-profit educational purposes;

(b) the nature of the copyrighted work;

(c) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and

(d) the effect of the use upon the potential market for, or value of, the copyrighted work.

(3) The acts of **fair use** shall include the circumstances specified in section 12.

Acts of fair use

12.

(1) Notwithstanding anything contained in paragraph (a) of subsection (1) of section 9 and subject to the provisions of subsection (2) of this section, the private reproduction of a published work in a single copy shall be permitted without the authorization of the owner of the copyright, where the reproduction is made by a physical person from a lawful copy of such work exclusively for his own personal purposes.

(2) The permission under subsection (1) of this section shall not be extended to the reproduction—

(a) of a work of architecture in the form of a building or other constructions ;

(b) in the form of reprography of the whole or a substantial part of a book or of a musical work in the form of notations;

(c) of the whole or a substantial part of a data base;

(d) of a computer program, except as provided in subsection (7) ; and

(e) of any work, in case the reproduction would conflict with a normal exploitation of the work or would otherwise unreasonably prejudice the legitimate interests of the owner of the copyright.

(3) Notwithstanding the provisions of paragraph (a) of subsection (1) of section 9, the reproduction, in the form of a quotation, of a short part of a published work shall be permitted without authorization of the owner of copyright: Provided that the reproduction is compatible with fair practice and does not exceed the extent justified by the purpose of such reproduction. The quotation shall be accompanied by an indication of the source and the name of the author, if his name appears in the work from which the quotation is taken.

(4) Notwithstanding the provisions of paragraph (a) of subsection (1) of section 9, the following acts shall be permitted without the authorization of the owner of the copyright:

(a) the reproduction of a short part of a published work for teaching purposes by way of illustration, in writing or sound or visual recordings, provided that the reproduction is compatible with fair practice and does not exceed the extent justified by the purpose of such reproduction;

(b) the reprographic reproduction for face to face teaching in any educational institution the activities of which do not serve direct or indirect commercial gain, of published articles, other short works or short extracts of works, to the extent justified by the purpose, provided that the act of reproduction is an isolated one occurring, if repeated, on separate and unrelated occasions:

Provided however the source of the work reproduced and the name of the author shall be indicated as far as practicable on all copies made under this subsection.

(5) Notwithstanding the provisions of paragraph (a) of subsection (1) of section 9, any library or archives, whose activities do not serve any direct or indirect commercial gain may, without the authorization of the owner of copyright, make a single copy of the work by reprographic reproduction—

(a) where the work reproduced is a published article, other short work or short extract of a work, and where the purpose of the reproduction is to satisfy the request of a physical person: Provided that—

(i) the library or archives is satisfied that the copy will be used solely for the purposes of study, scholarship or private research,

(ii) the act of reproduction is an isolated occurrence, occurring if repeated, on separate and unrelated occasions;

(b) where the copy is made in order to preserve and, if necessary replace a copy, or to replace a copy which has been lost, destroyed or rendered unusable in the permanent collection of another similar library or archives: Provided that it is not possible to obtain such a copy under reasonable conditions; and Provided further, that the act of reprographic reproduction is an isolated occurrence occurring if repeated, on separate and unrelated occasions.

(6) Notwithstanding the provisions of paragraphs (a), (h) and (j) of subsection (1) of section 9, and subject to the condition that the source and the name of the author is indicated as far as practicable, the following acts shall be permitted in respect of a work without the authorization of the owner of copyright—

(a) the reproduction in a newspaper or periodical, manner of broadcasting or other manner of communication to the public, of an article published in a newspaper or periodical on current economic, political or religious topics or a broadcast or communication relating to the same, and such permission shall not apply where the right to authorize reproduction, broadcasting or other communication to the public is expressly reserved on the copies, by the owner of copyright, or in connection with broadcasting or other communication to the public of the work;

(b) for the purpose of reporting current events, the reproduction and the broadcasting or other communication to the public of short excerpts of a work seen or heard in the course of such events, to the extent that it is justified by the purpose of such reproduction;

(c) the reproduction in a newspaper or periodical, broadcasting or other manner of communication to the public, of a political speech, a lecture, address, sermon or other work of a similar nature delivered in public, or a speech delivered during legal proceedings, to the extent that it is justified by reason of the fact of providing current information.

(7) (a) Notwithstanding anything contained in paragraphs (a) and (c) of subsection (1) of section 9, reproduction in a single copy or the adaptation of a computer program by the lawful owner of a copy of that computer programme, shall be permitted without the authorization of the owner of copyright provided that the copy or adaptation is necessary—

(i) for use of the computer program with a computer for the purpose and extent for which the computer program has been obtained;

(ii) for archival purposes and for replacement of the lawfully owned copy of the computer program in the event that the said copy of the computer program is lost, destroyed or rendered unusable.

(b) No copy or adaptation of a computer program shall be used for any purpose other than those specified in paragraph (a), and any such copy or adaptation shall be destroyed in the event that continued possession of the copy of the computer program ceases to be lawful.

(8) Notwithstanding the provisions of paragraph (f) of subsection (1) of section 9, the importation of a copy of a work by a physical person for his own personal purposes shall be permitted without the authorization of the owner of copyright.

(9) Notwithstanding anything contained in paragraph (g) of subsection (1) of section 9, the public display of originals or copies of works shall be permitted without the authorization of the owner of copyright: Provided that the display is made other than by means of a film, slide, television image or otherwise on screen or by means of any other device or process : Provided further, the work has been published or the original or the copy displayed has been sold, given away or otherwise transferred to another person by the author or his successor in title.

(10) Notwithstanding anything contained in this Part, the following shall not be an infringement of copyright:

(a) the performance or display of a work for educational or teaching purposes by government or non profit educational institutions, in classrooms or similar places set aside for education : Provided that, in the case of an audiovisual work, the performance or the display of individual images, is given by means of a lawfully made copy, or the person responsible for the performance did not know or had no reason to believe that the copy was not lawfully made.

(b) the communication of a transmission embodying a performance or display of a work by the public reception of the transmission on a single receiving apparatus, of a kind commonly used in private homes, unless:

(i) a direct charge is made to see or hear the transmission ; or

(ii) the transmission thus received is further transmitted to the public.

SWAZILAND

The Copyright Act, 1912

PART I – COMMONWEALTH COPYRIGHT

Infringement of Copyright

4.

(1) Copyright in a work shall be deemed to be infringed by any person who, without the consent of the owner of the copyright, does anything the sole right to do which is by this Act conferred on the owner of the copyright:

Provided that the following acts shall not constitute an infringement of copyright:

(a) any **fair dealing** with any work for the purposes of private study, research, criticism, review, or newspaper summary....

TAIWAN

Copyright Act, 2007

65.

Fair use of a work shall not constitute infringement on economic rights in the work. In determining whether the exploitation of a work complies with the provisions of Articles 44 through 63, or other conditions of **fair use**, all circumstances shall be taken into account, and in particular the following facts shall be noted as the basis for determination:

1. The purposes and nature of the exploitation, including whether such exploitation is of a commercial nature or is for nonprofit educational purposes.

2. The nature of the work.

3. The amount and substantiality of the portion exploited in relation to the work as a whole.

4. Effect of the exploitation on the work's current and potential market value.

Where the copyright owner organization and the exploiter organization have formed an agreement on the scope of the **fair use** of a work, it may be taken as reference in the determination referred to in the preceding paragraph. In the course of forming an agreement referred to in the preceding paragraph, advice may be sought from the specialized agency in charge of copyright matters.

TUVALU

Copyright Ordinance (Chapter 60)

Tuvalu applies the 1956 Copyright Act of England (*see* United Kingdom *infra*).⁴

⁴ <http://www.wipo.int/wipolex/en/details.jsp?id=7654>

PART I – PRELIMINARY

Fair use of works protected by copyright

15.

- (1) The fair use of a protected work in its original language or in a translation shall not be an infringement of the right of the author and shall not require the consent of the owner of the copyright where—
- (a) the production, translation, adaptation, arrangement or other transformation of the work is for private personal use only;
 - (b) a quotation from a published work is used in another work, including a quotation from a newspaper or periodical in the form of press summary, where—
 - (i) the quotation is compatible with fair practice; and
 - (ii) the extent of the quotation does not exceed what is justified for the purpose of the work in which the quotation is used, and
 - (iii) acknowledgement is given to the work from which the quotation is made;
 - (c) a published work is used for teaching purpose to the extent justified for the purpose by way of illustration in a publication, broadcast or sound or visual recording in so far as the use is compatible with fair practice and acknowledgement is given to the work and the author;
 - (d) the work is communicated to the public for teaching purposes for schools, colleges, universities or other educational institution or for professional training or public education in so far as the use is compatible with fair practice and acknowledgement is given to the work and the author;
 - (e) the work is reproduced, broadcast or communicated to the public with acknowledgement of the work, in any article printed in a news paper, periodical or work broadcast on current economic, social, political or religious topic unless the article or work expressly prohibits its reproduction, broadcast or communication to the public;
 - (f) any work that can be seen or heard is reproduced or communicated to the public by means of photograph, audio-visual work or broadcast to the extent justified for the purpose when reporting on current events;
 - (g) any work of art or architecture in a photograph or an audio-visual or television broadcast is reproduced and communicated to the public where the work is permanently located in a public place or is included by way of background or is otherwise incidental to the main object represented in the photograph or audio-visual work or television broadcast;
 - (h) for the purposes of current information, a reproduction in the press, broadcast or communication to the public is made to—
 - (i) a political speech or a speech delivered during any judicial proceeding; or
 - (ii) an address, lecture, sermon or other work of a similar nature delivered in public;
 - (i) for the purpose of a judicial proceeding, work is reproduced;
 - (j) subject to conditions prescribed by the Minister, a reproduction of a literary, artistic or scientific work by a public library, a non-commercial documentation centre, a scientific institution or an educational institute if the reproduction and the copies made—
 - (i) do not conflict with the normal exploitation of the work reproduced;
 - (ii) do not unreasonably affect the right of the author in the work; and
 - (k) any work is transcribed into braille or sign language for educational purpose of persons with disabilities.

- (2) In determining whether the use made of a work in any particular case is a **fair use** the following factors shall be considered—
- (a) the purpose and character of the use, including whether the use is of a commercial nature or is for non-profit educational purposes;
 - (b) the nature of the protected work;
 - (c) the amount and substantiality of the portion used in relation to the protected work as a whole; and
 - (d) the effect of the use upon the potential market for value of the protected work.
- (3) The fact that a piece of work is not published shall not of itself prejudice the requirement of **fair use** in accordance with subsection (2).

PART IV – NEIGHBOURING RIGHTS

Limitation on neighbouring rights

- 34.** The provisions of sections 24, 27, 28, 29, 30, 33 shall not apply where the acts done are for—
- (a) private use;
 - (b) the reporting of current events, except that no more than short excerpts of a performance, sound recording or audio-visual performance fixation or broadcast are used;
 - (c) teaching science, or
 - (d) quotations in the form of short excerpts of a performance, sound recording, audio-visual fixation or fixation or broadcast, which are compatible with **fair use** and are justified by the informative purpose of the quotations.

UNITED KINGDOM

Copyright, Designs and Patents Act 1988 (C. 48)

SCHEDULE 2

Rights in Performances: Permitted Acts

Criticism, reviews and news reporting

2.

(1) **Fair dealing** with a performance or recording for the purpose of criticism or review, of that or another performance or recording, or of a work, does not infringe any of the rights conferred by this Chapter provided that the performance or recording has been made available to the public.

(1A) **Fair dealing** with a performance or recording for the purpose of reporting current events does not infringe any of the rights conferred by this Chapter.

(2) Expressions used in this paragraph have the same meaning as in section 30.

CHAPTER III – ACTS PERMITTED IN RELATION TO COPYRIGHT WORKS

General

Research and private study

29.

(1) **Fair dealing** with a literary, dramatic, musical or artistic work for the purposes of research for a non-commercial purpose does not infringe any copyright in the work provided that it is accompanied by a sufficient acknowledgement.

(1B) No acknowledgement is required in connection with **fair dealing** for the purposes mentioned in subsection (1) where this would be impossible for reasons of practicality or otherwise.

(1C) **Fair dealing** with a literary, dramatic, musical or artistic work for the purposes of private study does not infringe any copyright in the work.

(2) **Fair dealing** with the typographical arrangement of a published edition for the purposes of research or private study does not infringe any copyright in the arrangement.

(3) Copying by a person other than the researcher or student himself is not **fair dealing** if—

(a) in the case of a librarian, or a person acting on behalf of a librarian, he does anything which regulations under section 40 would not permit to be done under section 38 or 39 (articles or parts of published works: restriction on multiple copies of same material), or

(b) in any other case, the person doing the copying knows or has reason to believe that it will result in copies of substantially the same material being provided to more than one person at substantially the same time and for substantially the same purpose.

(4) It is not **fair dealing**—

(a) to convert a computer program expressed in a low level language into a version expressed in a higher level language, or

(b) incidentally in the course of so converting the program, to copy it, (these acts being permitted if done in accordance with section 50B (decompilation)).

(4A) It is not **fair dealing** to observe, study or test the functioning of a computer program in order to determine the ideas and principles which underlie any element of the program (these acts being permitted if done in accordance with section 50BA (observing, studying and testing)).

Criticism, review and news reporting

30.

(1) **Fair dealing** with a work for the purpose of criticism or review, of that or another work or of a performance of a work, does not infringe any copyright in the work provided that it is accompanied by a sufficient acknowledgement and provided that the work has been made available to the public.

(1A) For the purposes of subsection (1) a work has been made available to the public if it has been made available by any means, including—

- (a) the issue of copies to the public;
- (b) making the work available by means of an electronic retrieval system;
- (c) the rental or lending of copies of the work to the public;
- (d) the performance, exhibition, playing or showing of the work in public;
- (e) the communication to the public of the work,

but in determining generally for the purposes of that subsection whether a work has been made available to the public no account shall be taken of any unauthorised act.

(2) **Fair dealing** with a work (other than a photograph) for the purpose of reporting current events does not infringe any copyright in the work provided that (subject to subsection (3)) it is accompanied by a sufficient acknowledgement.

(3) No acknowledgement is required in connection with the reporting of current events by means of a sound recording, film, or broadcast where this would be impossible for reasons of practicality or otherwise.

Moral Rights

79.

(1) The right conferred by section 77 (right to be identified as author or director) is subject to the following exceptions.

(4) The right is not infringed by an act which by virtue of any of the following provisions would not infringe copyright in the work—

- (a) section 30 (**fair dealing** for certain purposes), so far as it relates to the reporting of current events by means of a sound recording, film....

UNITED STATES

The Copyright Act of 1976

Limitations on exclusive rights: fair use

107.

Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include—

- (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- (2) the nature of the copyrighted work;
- (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- (4) the effect of the use upon the potential market for or value of the copyrighted work.

The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.

VANUATU

Archives Act (Cap 216)

PART 3 – ACTS NOT CONSTITUTING INFRINGEMENT OF COPYRIGHT IN WORKS

Reproduction for educational or legal purposes

13.

A **fair dealing** with a work for the purpose of research or study does not constitute an infringement of the copyright in the work.

A **fair dealing** with a work does not constitute an infringement of the copyright in the work if it is for the purpose of the giving of professional advice by a legal practitioner or patent attorney.

Reproduction, broadcasting and other communication to the public for information purposes

14.

A **fair dealing** with a work does not constitute an infringement of the copyright in the work if: it is for the purpose of criticism or review, whether of that work or of another work; and an acknowledgment of the work and the author as far as practicable is made.

PART 8 – MISCELLANEOUS

Regulations

44.

(1) The Minister may, by Order in writing, make regulations prescribing all matters:

(a) required or permitted by this Act to be prescribed; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Without limiting subsection (1), regulations may: prescribe **fair dealings** with works that do not constitute an infringement of the copyright in the work; and prescribe **fair dealings** in relation to performances, sound recordings or broadcasts that do not constitute an infringement of a right protected under Part 5.

ZAMBIA

Copyright and Performance Rights Act, 1994

PART II – COPYRIGHT

Infringement of Copyright

Acts which do not constitute infringements

21.

(1) Subject to subsection (2), the following acts shall not constitute infringement of copyright:

- (a) **fair dealing** with a work for private study or for the purposes of research done by an individual for his personal purposes, otherwise than for profit;
- (b) **fair dealing** with a work for the purposes of criticism or review, whether of that work or any other work, provided there is a sufficient acknowledgement;
- (c) **fair dealing** with a work for the purposes of reporting current events—
 - (i) in a newspaper, magazine or similar periodical, provided there is a sufficient acknowledgement; or
 - (ii) by broadcasting or by inclusion in a cable program service or by its use in an audiovisual work;

(2) An act which—

- (a) conflicts with the normal commercial exploitation of a work; or
- (b) unreasonably prejudices the legitimate commercial interests of the owner of the copyright in a work;

shall not, for the purposes of subsection (1)—

- (i) be treated as **fair dealing** with the work....

PART V – RIGHTS IN PERFORMANCES

Acts which do not constitute infringements

50.

(1) Subject to subsection (2), the following acts shall not constitute infringement of performer's right or recording right—

- (a) **fair dealing** with a performance or recording for private study or for the purposes of research done by an individual for his personal purposes, otherwise than for profit;
- (b) **fair dealing** with a performance or recording for the purposes of criticism or review, whether of that performance or any other performance, provided there is a sufficient acknowledgement;
- (c) **fair dealing** with a performance or recording for the purposes of reporting current events by broadcasting or by inclusion in a cable program service or by its use in an audiovisual work;

(2) An act which—

- (a) conflicts with the normal commercial exploitation of a performance; or
- (b) unreasonably prejudices the legitimate commercial interests of the performer or holder of recording right in a work;

shall not, for the purposes of subsection (1), be treated as **fair dealing**.

ZIMBABWE

Copyright and Neighboring Rights Act (Chapter 26:05)

PART III – PERMITTED ACTS IN RELATION TO COPYRIGHT WORKS

Fair dealing for purposes of research or private study

24.

(1) The copyright in a work shall not be infringed by any **fair dealing** for the purposes of research or private study by the person using the work.

(2) Reproducing a work shall not constitute **fair dealing** for the purposes of subsection (1) if the person who reproduces it knows or has reason to believe that it will result in copies of substantially the same material being provided to more than one person at substantially the same time.

Fair dealing for purposes of criticism, review or news reporting

29.

(1) The copyright in a work shall not be infringed by any **fair dealing**

(a) for the purposes of criticism or review of that work or of another work or of the performance of a work; or

(b) subject to subsection (2), for the purposes of reporting current events:

Provided that

(i) sufficient acknowledgement of the work shall be given, except where the work is used for the reporting of current events by means of an audio-visual work, a sound recording, a broadcast or a programme-carrying signal;

(ii) the use of a photograph for the purposes of reporting current events shall not constitute **fair dealing**.

(2) Paragraph (b) of subsection (1) shall not apply so as to authorise the publication of any part of an audiovisual work, a record or a programme-carrying signal representing a sporting event.



Foreign Ownership Of Firms in **IP-Intensive** Industries



Jonathan Band
Jonathan Gerafi

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Summary

For decades, U.S. domestic and foreign IP policy has been predicated on the assumption that U.S. firms dominated both domestic and foreign markets for IP products. In an effort to evaluate the standing of U.S. firms in IP intensive industries, this paper identifies the “nationality” of the leading firms in several important IP industries. The paper finds that for many industries, this assumption of U.S. dominance is no longer correct. This suggests that at times, IP policies adopted by Congress and the Executive Branch may benefit foreign corporations at the expense of U.S. consumers.



I. INTRODUCTION

In her letter transmitting the 2010 Joint Strategic Plan on Intellectual Property Enforcement to the President and to Congress, Victoria Espinel, the Intellectual Property Enforcement Coordinator, articulated the rationale behind the Administration's IP enforcement agenda:

Our entrepreneurial spirit, creativity and ingenuity are clear comparative advantages for America in the global economy. As such, Americans are global leaders in the production of creative and innovative services and products, including digital content, many of which are dependent on the protection of intellectual property rights. In order to continue to lead, succeed and prosper in the global economy, we must ensure the strong enforcement of American intellectual property rights.¹


The heart of the rationale is the second sentence, which contains two assertions: 1) Americans are global leaders in the production of creative and innovative services and products; and 2) many of these services and products are dependent on the protection of intellectual property rights. These paired assertions appear often in statements advocating strong IP protection made by both government officials and representatives of certain industries. Unfortunately, these advocacy statements do not provide evidence proving these assertions.

There is a growing literature exploring and questioning the second assertion—the dependency of the so-called IP-intensive industries on strong IP protection.² By contrast, the first assertion—American global leadership in the production of creative and innovative services and products—often goes unchallenged.

Assessing the U.S. global standing in IP-intensive industries is important because it helps to determine the optimal level of domestic IP protection, as well as what IP standards the U.S. should be urging upon its trading partners. For decades, U.S. domestic and foreign IP policy has been predicated on the assumption that U.S. firms dominated both domestic and foreign markets for IP products.³ Domination of foreign markets suggested that an increase in the level of IP protection internationally would lead to increased exports, which would in turn lead to more jobs in the U.S. and more profits for U.S. firms. Likewise, domination of domestic markets meant that the higher prices to U.S. consumers resulting from the decreased competition caused by strong IP protection would be offset by U.S. job growth.⁴

For many industries, however, this assumption of U.S. dominance is no longer true, and indeed, may never have been true. This suggests that at times, IP policies adopted by Congress and the Executive Branch may have benefitted foreign corporations at the expense of U.S. consumers. While the U.S. employees and contractors of a foreign firm may receive some income from the firm, it is safe to assume that much of the value generated by these employees and contractors will be captured by the firm and repatriated to its domicile.

In an effort to evaluate the standing of U.S. firms in IP-intensive industries, this paper identifies the “nationality” of the leading firms in a handful of these industries. In the copyright sector, this paper examines the publishing, recording, motion picture, and entertainment software industries. In the patent sector, this paper reviews the pharmaceutical industry, as well as broader trends involving foreign firms obtaining U.S. patents.




The majority of these firms are publicly traded corporations with employees and production facilities in different countries. Some firms are highly diversified, while others pursue a more focused business strategy. This paper considers a firm to be foreign-owned if its ultimate parent corporation is headquartered outside of the United States. The paper also provides information concerning these firms' U.S. and global revenues and employees, when such information is publicly available.

The paper's key findings are as follows:

- Four of the “Big Six” publishers, the largest English language trade publishers, are foreign-owned. More than 80 percent of the global revenue of the Big Six is generated by these foreign-owned companies. These foreign-owned companies publish more than two thirds of the trade books in the U.S.
- Four of the five largest STM (science, technical and medical)/Professional publishers are foreign-owned. More than 90 percent of the revenue of the five largest STM/Professional publishers was generated by foreign-owned firms.
- Only seven of the world's 50 largest publishers of all categories are U.S.-owned.
- The book publishing industry in Europe has approximately twice as many employees as in the United States.
- Of the top ten best-selling fiction authors in any language whose work is still in copyright, five are foreign. A British author wrote three of the top five best-selling books in the U.S. in 2012.
- Two of the three major record labels are foreign-owned. These two labels have a market share of 59 percent.
- Thirteen of the twenty best-selling recording artists are foreign.
- Of the 50 most popular motion pictures in the United States in 2012, 50 percent were filmed partly or entirely outside of the United States.
- In 2013, the Oscar winners in thirteen of 24 categories were foreign. In 2012, the Oscar winners in eleven of 24 categories were foreign.
- Seventy percent of the most recent generation of game consoles were manufactured by Japanese companies. Japanese companies have manufactured 92 percent of all game consoles ever sold.
- In 2011, foreign companies obtained 7,000 more U.S. patents than U.S. companies.
- In 2011 and 2012, seven of the top ten companies receiving U.S. patents were foreign.
- 57 percent of the global revenue of the fifteen largest pharmaceutical companies was generated by foreign-owned companies.
- The majority of the employees of both the U.S. and the foreign-owned pharmaceutical companies work outside of the United States.

Although the paper does not look at trademark markets, anecdotal observation suggests the trend may continue there as well. Many of the most prominent luxury brands are produced by foreign companies, including Louis Vuitton (France), Hermes (France), Chanel (France), Cartier (France), Gucci (originally Italian, now French-owned), Prada (Italy), Omega (Switzerland), Rolex (Switzerland), TAG Heuer (Switzerland), and Patek Philippe (Switzerland).



There is absolutely nothing sinister about foreign ownership of firms in IP intensive industries, including foreign ownership of companies originally established in the U.S. This is to be expected in a globalized economy with multinational corporations and complex cross-border supply chains. Moreover, many countries in Western Europe and East Asia are at the same level of technological and economic development as the United States. The critical point is that in such a globalized economy, U.S. policymakers should no longer assume without reflection that the beneficiaries of protectionist IP policies are U.S. firms and, by extension, U.S. workers and shareholders.


II. COPYRIGHT INDUSTRIES

A. Publishing

1. Trade

Foreign-owned companies dominate the U.S. and global publishing markets. The four largest of the so-called Big Six publishers, the top-selling English-language trade publishers, are owned by foreign corporations. (Trade publishers publish books for a general audience.) The global revenue of the Big Six exceeded \$10 billion in 2010 and 2011. Over 80 percent of that revenue was from foreign-owned companies. The foreign-owned Big Six companies controlled 71 percent of the book sales in 2011. Two of the Big Six, Penguin and Random House, have announced that they plan to merge. Random House's parent corporation, German-owned Bertelsmann, will own 53 percent of the joint venture, and Penguin's parent, U.K.-based Pearson, will own 47 percent. If government regulators approve the merger, the joint venture will control a 25 percent share of the U.S. publishing market. The merger reportedly headed off a bid by News Corp. to purchase Penguin.

Although News Corp., the parent company of Big Six publisher HarperCollins, is headquartered in New York City, it grew out of a newspaper company established in Adelaide, Australia, in 1923. Keith Murdoch acquired the company in 1949, and his son Rupert inherited it after Keith's death in 1952. Rupert Murdoch established News Corp. in the U.S. in 1979 as a holding company for his media properties in Australia and the United States. Murdoch became a U.S. citizen in 1985, reportedly to satisfy the legal requirement that only U.S. citizens could own television stations in the U.S. In 2012, News Corp. disclosed that foreign investors owned 36 percent of the company's voting shares, thereby violating the Federal Communications Act's 25 percent limit on foreign ownership of broadcast stations. To comply with the Act's requirements, the company's board suspended 50 percent of the foreign shareholders' voting rights.

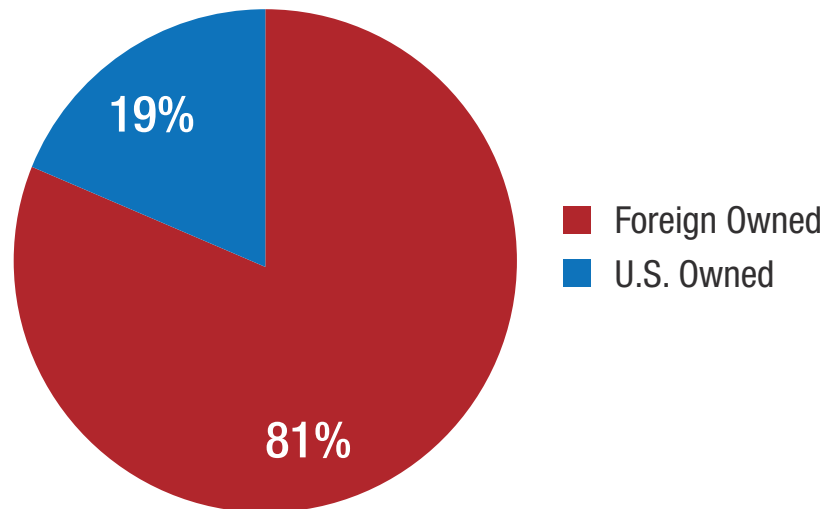


The Big Six Trade Publishers: Revenue, 2011

Company	Parent	Company Revenue (\$M)	Revenue in USA (\$M)	HQ
Hachette Book Group	Lagardere	\$2,649	\$609	France ⁵
Random House	Bertelsmann	\$2,274	\$1,223	Germany ⁶
Macmillan	Georg Von Holtzbrinck	\$1,952	n.a.	Germany ⁷
Penguin	Pearson	\$1,616	n.a.	UK ⁸
HarperCollins	News Corp.	\$1,190	n.a.	USA ⁹
Simon & Schuster	CBS Corporation	\$787	\$787	USA ¹⁰

(In this paper, "n.a." means not available.)

The Big Six Trade Publishers: Global Revenue By Parent Headquarters, 2011



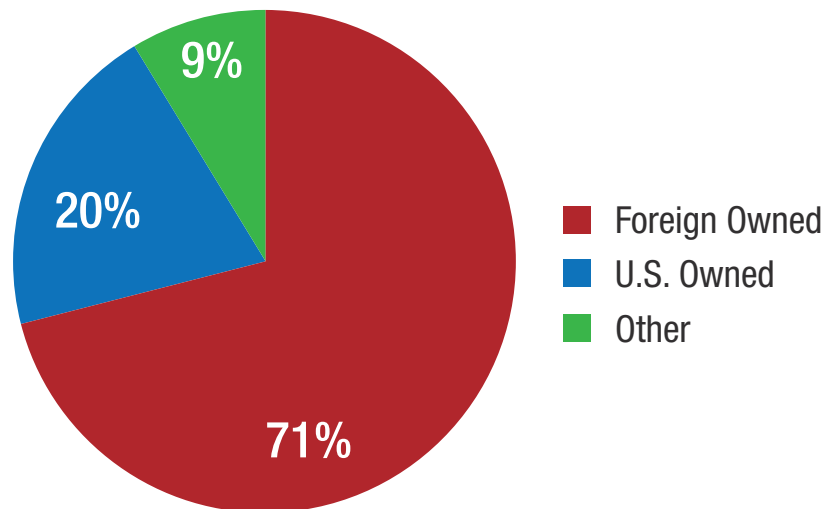
The Big Six Trade Publishers: Revenue, 2010

Company	Parent	Company Revenue (\$M)	Revenue in USA (\$M)	HQ
Random House	Bertelsmann	\$3,844	\$2,110	Germany ¹¹
Hachette Book Group	Lagardere	\$2,873	\$661	France ¹²
Penguin	Pearson	\$1,648	n.a.	UK ¹³
Macmillan	Georg Von Holtzbrinck	\$1,512	n.a.	Germany ¹⁴
HarperCollins	News Corp.	\$1,269	n.a.	USA ¹⁵
Simon & Schuster	CBS Corporation	\$791	\$791	USA ¹⁶

The Big Six Trade Publishers: Softcover, 2011 (Market Share 1530 Best Selling Titles)¹⁷

Company	Share	HQ
Random House	29.5%	Germany
Penguin USA	15.6%	UK
Hachette Book Group USA	12.9%	France
Simon & Schuster	9.7%	USA
Macmillan	7%	Germany
HarperCollins	6.6%	USA
Other	18.7%	n.a.

The Big Six Softcover Market Share, 2011 (1530 Best Selling Titles)

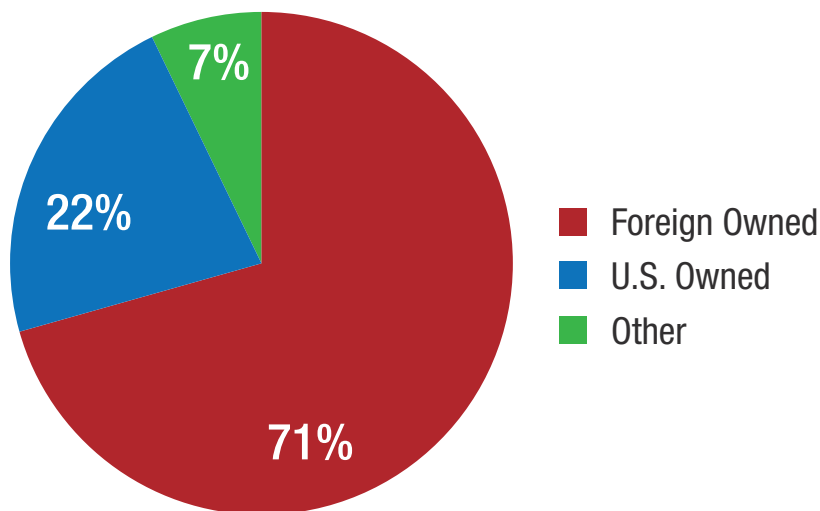


(The foreign-owned market share includes Harlequin (Canada), with a market share of 6.6 percent. The U.S.-owned market share includes Workman/Algonquin, with a market share of 4 percent.)

The Big Six Trade Publishers: Hardcover, 2011 (Market Share 1530 Best Selling Titles)¹⁸

Company	Share	HQ
Random House	31.4%	Germany
Hachette Book Group USA	16.2%	France
Penguin USA	15.8%	UK
Simon & Schuster	11.1%	USA
HarperCollins	8.2%	USA
Macmillan	7.1%	Germany
Other	10.2%	n.a.

The Big Six Hardcover Market Share, 2011 (1530 Best Selling Titles)



(The foreign-owned market share includes Harlequin (Canada), with a market share of 0.3 percent. The U.S.-owned market share includes Hyperion, Tyndale and Kensington.)

Of the top ten best-selling fiction authors in any language whose work is still in copyright, five are foreign—Agatha Christie, Barbara Cartland, Georges Simenon, Enid Blyton, and J.K. Rowling.¹⁹ (The best-selling author of all time is William Shakespeare, whose works are in the public domain.) The books in the *Fifty Shades of Grey* series, written by British author E.L. James, were three of the five best-selling books in the United States in 2012.²⁰ Other best-selling British authors include J.R.R. Tolkien (global sales of the *Middle Earth* series estimated at 550 million copies) and C.S. Lewis (global sales of the *Chronicles of Narnia* series estimated at 400 million copies).

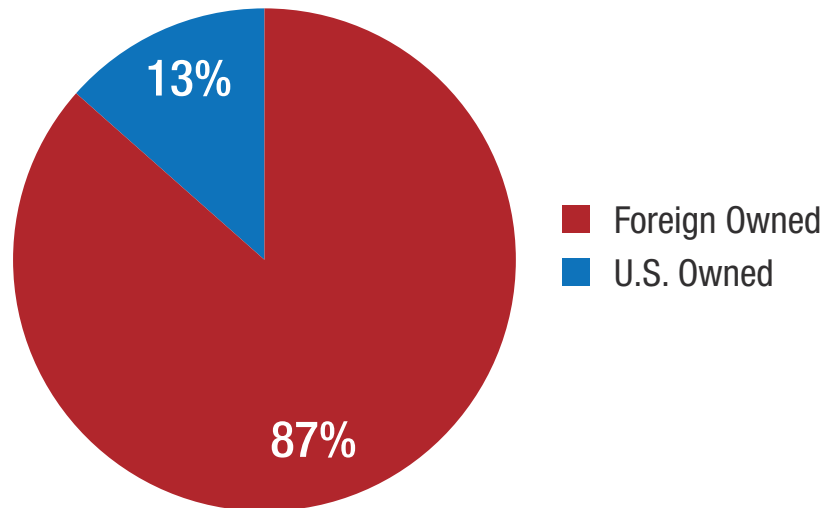
2. STM/Professional

Four of the five largest STM (science, technical, and medical)/Professional publishers are foreign-owned. In 2010, 88 percent of the global revenue of the five STM/Professional publishers was generated by foreign-owned companies. In 2011, 87 percent of the U.S. revenue of the five STM/Professional publishers was earned by foreign companies.

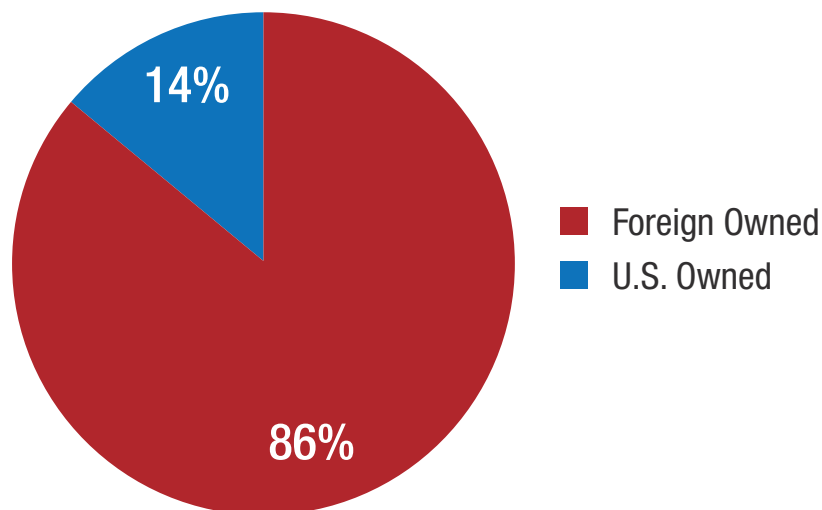
Top Five STM/Professional Publishers: Revenue, 2011²¹

Company	Company Revenue (\$M)	Revenue in USA (\$M) ²²	HQ
Reed Elsevier	\$5,686	\$2,940	UK/Netherlands ²³
Thomson Reuters	\$5,435	\$3,152	Canada ²⁴
Wolters Kluwer	\$4,360	\$2,180	Netherlands ²⁵
Wiley	\$1,743	\$888	USA ²⁶
Springer	\$1,138	\$285	Germany ²⁷

Top Five STM/Professional Publishers: Global Revenue by Parent Headquarters, 2011



Top Five STM/Professional Publishers: U.S. Revenue By Parent Headquarters, 2011²⁸



Top Five STM/Professional Publishers: Revenue, 2010

Company	Company Revenue (\$M)	Revenue in USA (\$M) ²⁹	HQ
Reed Elsevier	\$7,149	\$5,070	UK/Netherlands ³⁰
Thomson Reuters	\$5,637	\$3,326	Canada ³¹
Wolters Kluwer	\$4,719	\$2,407	Netherlands ³²
Wiley	\$1,699	\$866	USA ³³
Springer	\$1,149	n.a.	Germany ³⁴

3. All Publishers

Publishers' Weekly's list of the world's largest publishers, which includes trade publishers, STM/Professional publishers, and foreign language publishers, likewise reflects heavy foreign ownership. Only seven of the 54 listed publishers are wholly U.S.-owned.

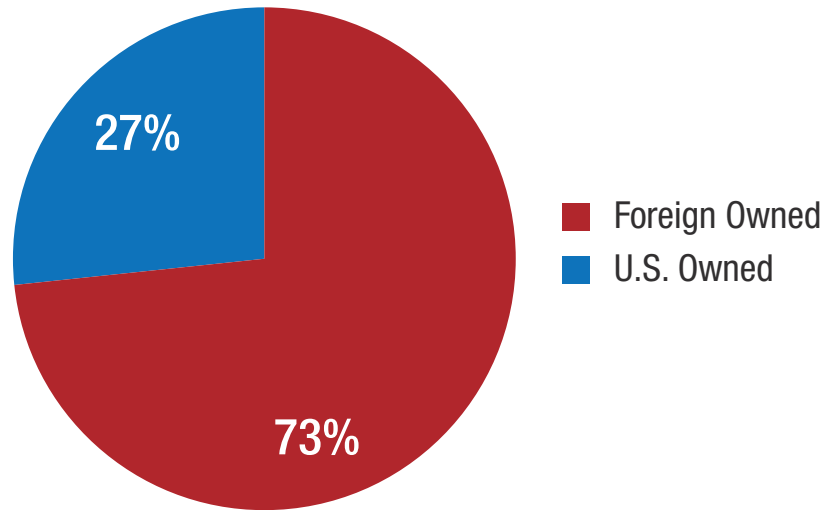
The Global 50: The World's Largest Publishers, 2012³⁵

Rank (2011)	Rank (2010)	Publishing Company	Country	Mother Corp. or Owner	Country Mother Corp.	2011 Revenue (\$M)	2010 Revenue (\$M)
1	1	Pearson	U.K.	Pearson	U.K.	\$8,411	\$8,097
2	2	Reed Elsevier	U.K./NL/U.S.	Reed Elsevier Corp.	U.K./NL/U.S.	\$5,686	\$7,149
3	3	Thomson Reuters	U.S.	The Woodbridge Company LTD	Canada	\$5,435	\$5,637
4	4	Wolters Kluwer	NL	Wolters Kluwer	NL	\$4,360	\$4,719
5	6	Hachette Livre	France	Legardere	France	\$2,649	\$2,873
6	8	Grupo Planeta	Spain	Grupo Planeta	Spain	\$2,304	\$2,427
7	7	McGraw-Hill Ed.	U.S.	McGraw-Hill Companies	U.S.	\$2,292	\$2,433
8	5	Random House	Germany	Bertelsmann AG	Germany	\$2,274	\$2,844
9	11	Holtzbrinck	Germany	Verlagsgruppe Georg Von Holtzbrinck	Germany	\$1,952	\$1,512
10	10	Scholastic	U.S.	Scholastic	U.S.	\$1,906	\$1,912
11	9	Cengage Learning	U.S.	Apax Partners et al.	U.S./Canada	\$1,876	\$2,007
12	13	Wiley	U.S.	Wiley	U.S.	\$1,743	\$1,699
13	12	De Agostini Editore	Italy	Grupo De Agostini	Italy	\$1,724	\$1,843
14	15	Shueisha	Japan	Hitotsubashi Group	Japan	\$1,714	\$1,597
15	16	Kodansha	Japan	Kodansha	Japan	\$1,551	\$1,498
16	17	Shogakukan	Japan	Hitotsubashi Group	Japan	\$1,444	\$1,441
17	33	Reader's Digest	U.S.	RDA Holding Co.	U.S.	\$1,438	\$1,460
18	14	Houghton Mifflin Hancourt	U.S.	Education Media and Publishing Group Limited	U.S./Cayman Islands	\$1,295	\$1,673

Rank (2011)	Rank (2010)	Publishing Company	Country	Mother Corp. or Owner	Country Mother Corp.	2011 Revenue (\$M)	2010 Revenue (\$M)
19	19	Springer Science and Business Media	Germany	EQT and GIC Investors	Sweden, Singapore	\$1,138	\$1,149
20	18	HarperCollins	U.S.	News Corporation	U.S.	\$1,100	\$1,269
21	20	Informa	U.K.	Informa plc	U.K.	\$1,069	\$1,039
22	21	Gakken	Japan	Gakken Co. Ltd.	Japan	\$1,043	\$956
23	22	Oxford University Press	U.K.	Oxford University	U.K.	\$1,004	\$941
24	24	Grupo Santillana	Spain	PRISA	Spain	\$936	\$852
25	23	Bonnier	Sweden	The Bonnier Group	Sweden	\$909	\$927
26	26	Kadokawa Publishing	Japan	Kadokawa Holdings Inc.	Japan	\$904	\$794
27	27	Simon & Schuster	U.S.	CBS	U.S.	\$787	\$791
28	28	Egmont Group	Denmark/ Norway	Egmont International Holding A/S	Denmark	\$703	\$792
29	29	Woongjin ThinkBig	Korea	Woonglin Holding	Korea	\$685	\$723
30	25	RCS Libri	Italy	RCS Media Group	Italy	\$667	\$805
31	31	Klett	Germany	Klett Gruppe	Germany	\$594	\$617
32	32	Cornelsen	Germany	Cornelsen	Germany	\$558	\$584
33	34	Mondadori	Italy	The Mondadori Group	Italy	\$506	\$549
34	35	GeMS-Gruppo editoriale Mauri Spagnol	Italy	Messagerie Italiane	Italy	\$494	\$525
35	39	Lefebvre Sarrut	France	Frojal	France	\$467	\$430
36	36	Harlequin	Canada	Torstar Crop.	Canada	\$450	\$468
37	37	Sanoma	Finland	Sanoma WSOY	Finland	\$446	\$464
37	40	China Education and Media Group (form. Higher Education Press)	China (PR)	China Education and Media Group	China (PR)	\$445	\$393

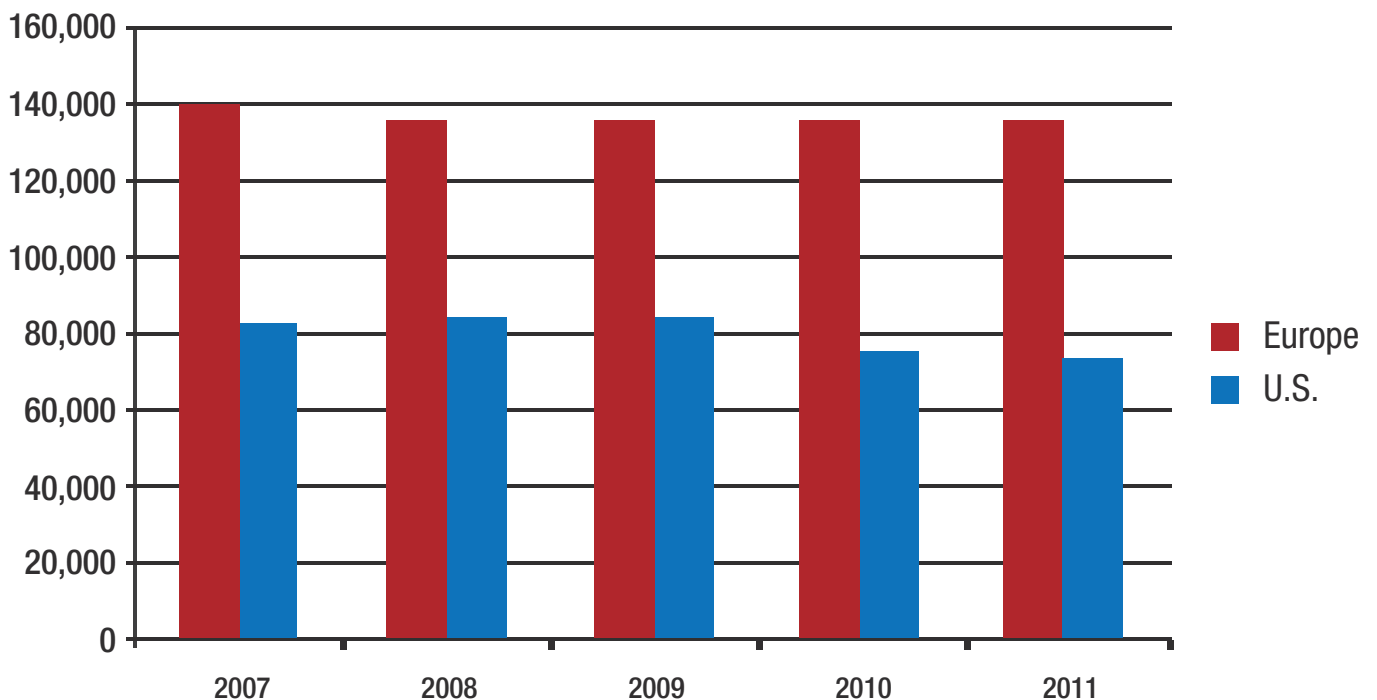
Rank (2011)	Rank (2010)	Publishing Company	Country	Mother Corp. or Owner	Country Mother Corp.	2011 Revenue (\$M)	2010 Revenue (\$M)
39	38	Media Participations	France	Media Participations	Belgium	\$442	\$434
40	46	Abril Educação	Brazil	Abril Group	Brazil	\$411	\$308
41	47	Perseus	U.S.	Perseus	U.S.	\$350	\$300
42	43	Westermann Verlagsgruppe	Germany	Medien Union (Rheinland-Pfalz Gruppe)	Germany	\$339	\$342
43	41	La Martinière Groupe	France	La Martinière Groupe	France	\$335	\$377
44	44	Bungeishunju	Japan	n.a.	Japan	\$331	\$337
45	55	AST	Russia	Privately Owned	Russia	\$330	\$215
46	45	Groupe Gallimard	France	Madrigall	France	\$329	\$320
47	42	Shinchosha	Japan	n.a. (Privately Owned)	Japan	\$319	\$364
48	49	Kyowon	Korea	Kyowon	Korea	\$298	\$273
49	48	Weka	Germany	Weka Firmengruppe	Germany	\$282	\$277
50	52	Saraiva	Brazil	Saraiva	Brazil	\$267	\$249
51	51	Haufe Gruppe	Germany	Privately Owned	Germany	\$269	\$256
52	56	Editora FTD	Brazil	Editora FTDG	Brazil	\$226	\$214
53	54	Groupe Albin Michel	France	Groupe Albin Michel	France	\$216	\$219
54	58	EKSMO	Russia	Privately Owned			

Largest 54 Publishing Companies: Global Revenue, 2011



Approximately twice as many people are employed in the book publishing industry in Europe as in the United States.

Employees in Book Publishing Industry By Year³⁶



B. Music

The three major record labels had an 80 percent share of the U.S. market in 2010 and 2011. Foreign companies own two of these three major labels. Foreign-owned companies generated 76 percent and 77 percent of the Big Three's global revenue in 2011 and 2010, respectively. (In November 2011, the French owned Universal Music Group purchased the British owned EMI, contracting the four major labels to three labels. The European Commission required UMG to sell roughly one third of EMI to preserve competition in the industry, and Sony and BMG have announced their intention to bid on these EMI assets. BMG is currently a joint venture of German media giants Bertelsmann and Kohlberg Kravis Roberts.)

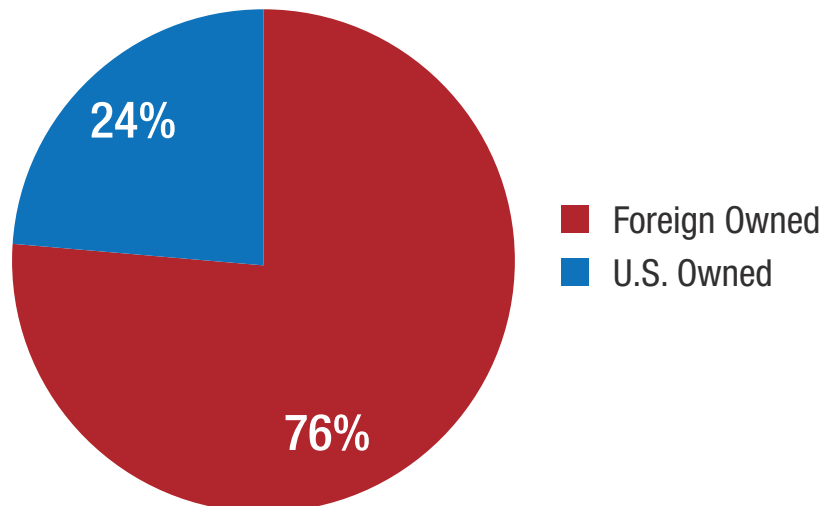
Thirteen of the twenty best-selling recording artists are foreign, including The Beatles (UK), Elton John (UK), Led Zeppelin (UK), Queen (UK), Pink Floyd (UK), Celine Dion (Canada), AC/DC (Australia), The Rolling Stones (UK), The Bee Gees (UK), ABBA (Sweden), U2 (Ireland), Phil Collins (UK), and Genesis (UK).³⁷

Major record label Warner Music Group was acquired in 2011 by Access, a privately held company owned by Len Blatvatnik. Blatvatnik was born in the Soviet Union, educated in the United States, and now lives in the UK. He is considered the sixth wealthiest person in the UK.

The Big Three Record Labels: Revenue, 2011

Company	Parent	Company Revenue (\$M)	HQ
Sony Music Entertainment	Sony	\$5,400	Japan ³⁸
Universal Music Group	Vivendi	\$4,197	France ³⁹
Warner Music Group	Access	\$2,988	USA ⁴⁰

The Big Three Record Labels: Global Revenue By Parent Headquarters, 2011



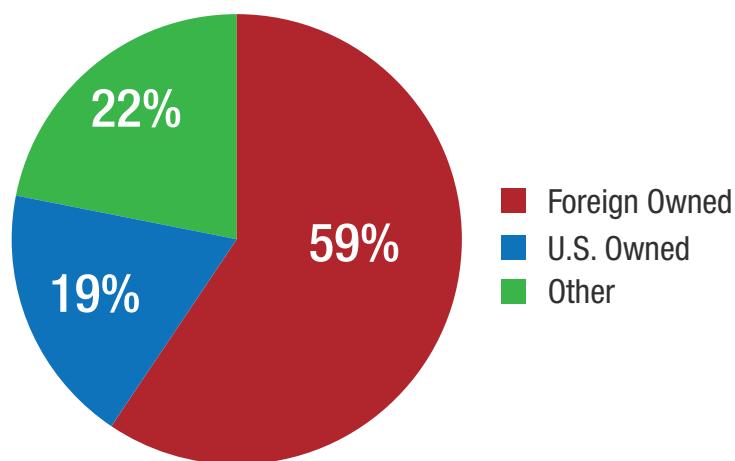
The Big Three Record Labels: Revenue, 2010

Company	Parent	Company Revenue (\$M)	HQ
Sony Music Entertainment	Sony	\$5,672	Japan ⁴¹
Universal Music Group	Vivendi	\$4,449	France ⁴²
Warner Music Group	Access	\$3,063	USA ⁴³

The Big Three Record Labels: U.S. Market Share, 2011⁴⁴

Company	Share	HQ
Universal Music Group	29.85%	France
Sony Music Entertainment	29.29%	Japan
Warner Music Group	19.13%	USA
Other	21.73%	n.a.

The Big Three Music Labels: U.S. Market Share, 2011



The Big Three Record Labels: U.S. Market Share, 2010⁴⁵

Company	Share	HQ
Universal Music Group	30.84%	France
Sony Music Entertainment	27.95%	Japan
Warner Music Group	20.01%	USA
Other	21.2%	n.a.

C. Motion Pictures

U.S. companies own five of the six major motion picture studios (Sony owns Columbia Pictures). Three of the four “mini-majors” are also U.S.-owned (DreamWorks Studios is 50 percent owned by Reliance, an Indian company). However, many of the films produced by these U.S. companies are filmed entirely or in part outside of the United States. Indeed, 50 percent of the 50 most popular films in the U.S. in 2012 were produced entirely or partly outside of the United States. Additionally, foreign companies often participate in the making of these films, for example by providing special effects. And many of the actors and directors are from other English-speaking countries. Accordingly, what is popularly viewed as “Hollywood” or the U.S. film industry in fact is a network of companies and individuals dispersed throughout what has been termed “the Anglo-Saxon economy”—the United States, the United Kingdom, Ireland, Canada, Australia, and New Zealand.

Thus, *The Hunger Games* was produced by the U.S.-based mini-major Lionsgate, and was filmed in North Carolina. Nevertheless, companies in Canada, Australia, and Germany worked on the film’s special effects, and the score was recorded in the U.K. Similarly, Disney’s Pixar Division produced the animated feature *Brave* in the United States, but the London Symphony Orchestra recorded the score, and a British company mixed the sound.⁴⁶

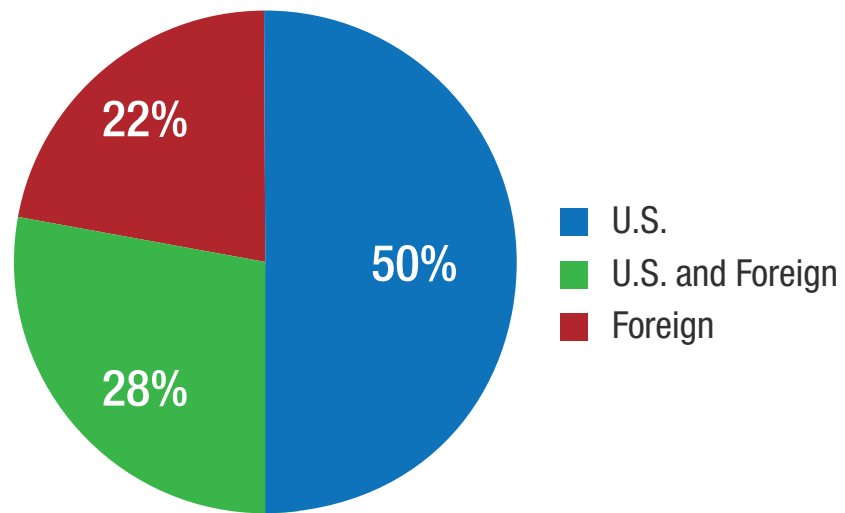
The 2013 Oscar winners in thirteen of 24 categories, including Best Director, Actor, Supporting Actor, Cinematography, Costume Design, Make Up, Original Score, Original Song, Sound Mixing, Sound Editing, Documentary and Visual Effects, were foreign. In 2012, the Oscar winners in eleven of 24 categories, including Best Picture, Director, Actor, Supporting Actor, Original Score, Original Song, Art Direction, Sound Mixing, and Film Editing, were foreign. In 2011, the Oscar winners in eight of 24 categories including Best Picture, Director, Supporting Actor, Visual Effects, and Original Screenplay, were foreign.⁴⁷

Filming Locations: Top 50 U.S. Grossing Films, 2012⁴⁸

Film	Location 1	Location 2	Location 3	Location 4
The Avengers	USA			
The Dark Knight Rises	USA	UK		
The Hunger Games	USA			
Skyfall	UK	Turkey	Japan	China
Twilight Saga	USA	Canada		
The Hobbit	New Zealand			
The Amazing Spiderman	USA			
Brave	USA			
Ted	USA			
Madagascar 3	USA			
The Lorax	USA			
Men In Black 3	USA			

Film	Location 1	Location 2	Location 3	Location 4
Wreck it Ralph	USA			
Ice Age 4	USA			
Snow White & Huntsman	UK			
Hotel Transylvania	USA			
Lincoln	USA			
Taken 2	Turkey	France	USA	
21 Jump Street	USA			
Prometheus	UK	Spain	Iceland	
Safe House	South Africa	USA	France	
The Vow	USA	Canada		
Magic Mike	USA			
The Bourne Legacy	USA	Canada	Philippines	South Korea
Argo	USA	Turkey		
Django Unchained	USA			
Journey 2	USA			
Les Misérables	France	UK		
Rise of the Guardians	USA			
Flight	USA			
Think Like a Man	USA			
Life of Pi	Canada	India	Taiwan	
The Campaign	USA			
Expendables 2	Bulgaria	China	USA	
Wrath of the Titans	UK	Spain		
Dark Shadows	UK	Canada		
John Carter	USA	UK		
Act of Valor	USA	Philippines	Cambodia	Mexico/Ukraine
Contraband	USA	Panama		
Looper	USA	China		
Madea 4	USA			
Battleship	USA	China		
Mirror Mirror	Canada			
Jack Reacher	USA			
Pitch Perfect	USA			
Chronicle	South Africa	Canada	USA	
Hope Springs	USA			
Underworld 4	Canada			
The Lucky One	USA			
The Dictator	USA	Spain	Morocco	

Film Production By Location, 2012



D. Entertainment Software

The business and personal computing software industries are dominated by U.S.-owned companies.

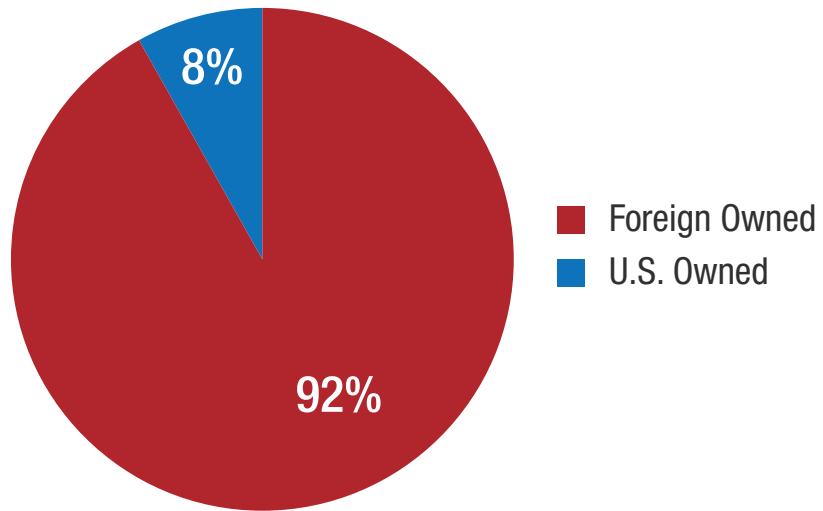
The top three of the five largest business software firms are headquartered in the U.S., and these three U.S. companies generated 83 percent of the revenue of the five companies.⁴⁹ The entertainment software industry, by contrast, is dominated by Japanese companies. Three Japanese companies—Nintendo, Sony, and Sega—have sold 92 percent of the video game consoles worldwide, and 89 percent of the game consoles in the United States. In 2011, Sony’s Playstation 3 represented 44 percent of shipments to the U.S., Japan and Europe; Microsoft’s Xbox 360 represented 31 percent; and Nintendo’s Wii 25 percent. The global console market was approximately \$27 billion in 2011, and the U.S. market was \$8.7 billion.⁵⁰

Sony, Microsoft, and Nintendo also produce many of the games that run on these consoles, or license (for a substantial royalty) the interface information that allows third party developers to write games that can operate on the consoles.

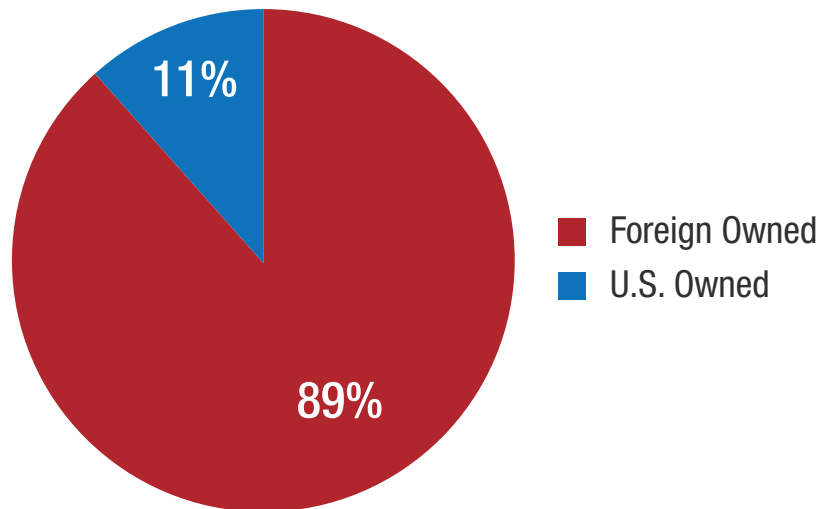
Console Manufacturers: Million Units Sold of All Generations⁵¹

Platform	North America ⁵²	Europe	Japan	Rest of World	Global	HQ
Nintendo	282.86	180.40	151.33	32.63	647.22	Japan
Playstation	140.89	141.29	71.92	55.26	409.36	Japan
Xbox	57.79	30.05	2.16	8.48	98.48	USA
Sega	27.11	14.65	14.53	1.01	57.30	Japan

Consoles Sold Worldwide By Parent Headquarters, All Generations



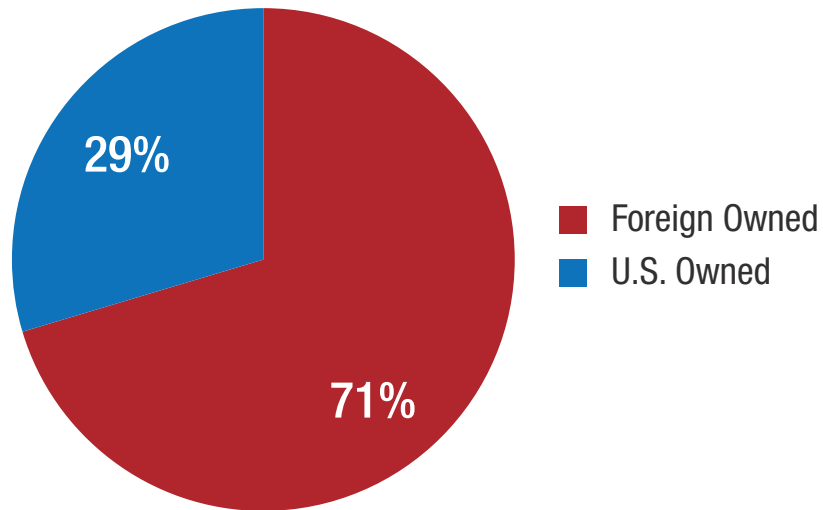
Consoles Sold in the U.S By Parent Headquarters, All Generations



Console Manufacturers: Units Sold of 7th Generation⁵³

Platform	Million Units	HQ
Wii	97.18	Japan
Playstation 3	70.2	USA
Xbox 360	70	USA

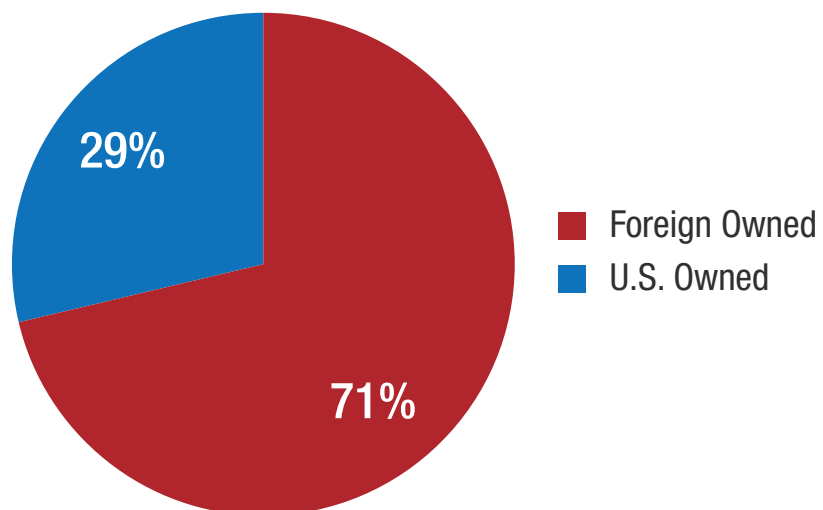
Consoles Sold Worldwide By Parent Headquarters, 7th Generation



Gaming Device Manufacturers: U.S. Sales and Market Share, 2011⁵⁴

Platform	Million Units	Share	HQ
Xbox 360	7.41	28.79%	USA
Nintendo Wii	4.87	18.92%	Japan
Playstation 3	4.46	17.33%	Japan
Nintendo 3DS	4.14	16.08%	Japan
Nintendo DS	3.62	14.06%	Japan
Playstation Portable	1.24	4.82%	Japan

Gaming Devices Sold in U.S. By Parent Headquarters, 2011



III. PATENT INDUSTRIES

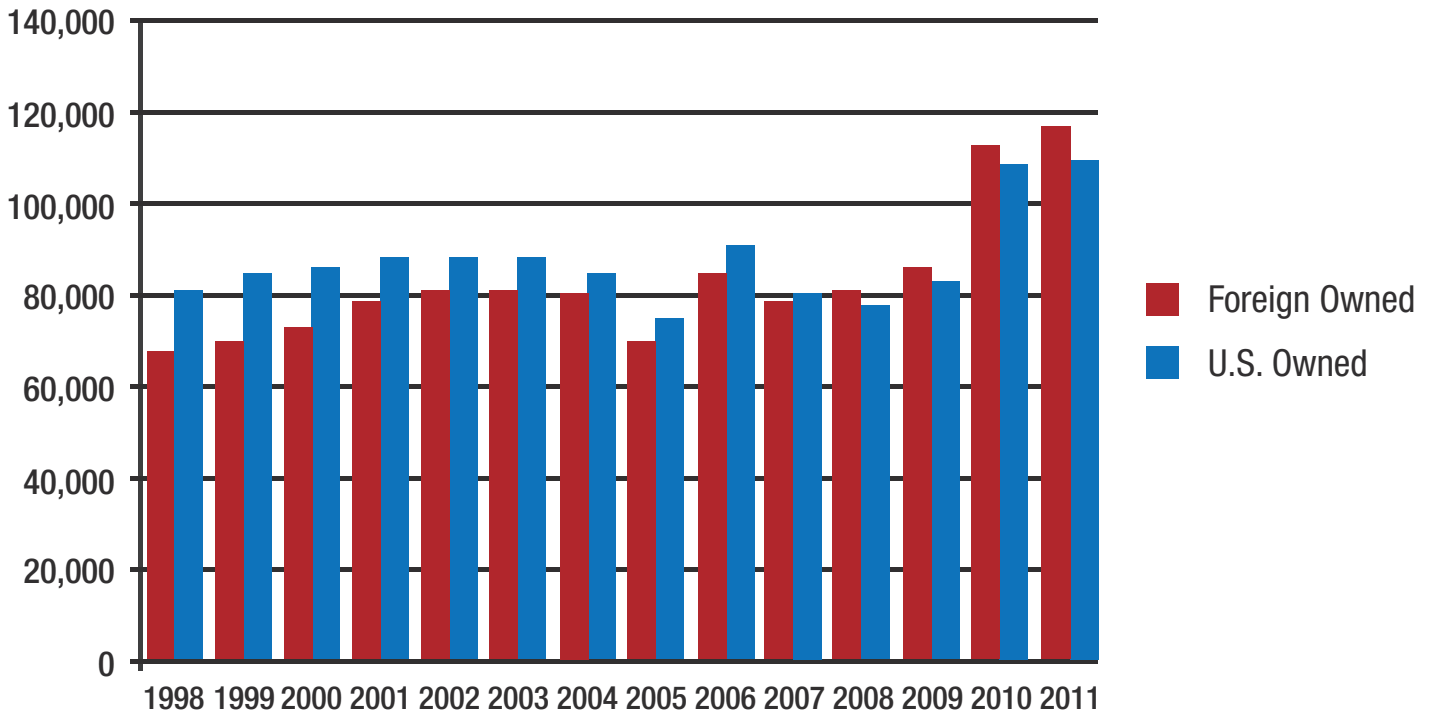
A. Granted Patents in the U.S.

Since 2008, foreign companies have obtained more U.S. patents each year than U.S. companies. In 2011 alone, foreign companies obtained 7000 more patents than U.S. companies. Additionally, in 2011 the number of patents obtained by U.S. companies grew less than 1 percent, while the number of patents obtained by foreign companies grew more than 3 percent. In 2011, seven of the top ten companies receiving U.S. patents were foreign. A total of 29,220 U.S. patents were issued to the top 10 companies; 66 percent—19,319—were granted to foreign companies.

Granted Patents In U.S. By Year⁵⁵

U.S. Origin	Before 1998	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	All Years
Number of Patents	1,620,765	80,289	83,906	85,068	87,600	86,971	87,893	84,270	74,637	89,823	79,526	77,502	82,382	107,792	108,626	2,837,050
Growth			4.50%	1.38%	2.98%	-0.72%	1.06%	-4.12%	-11.43%	20.35%	-11.46%	-2.55%	6.30%	30.84%	0.77%	
Foreign Origin	Before 1998	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	All Years
Number of Patents	1,002,152	67,228	69,579	72,426	78,435	80,360	81,130	80,020	69,169	83,949	77,756	80,270	84,967	111,822	115,879	2,155,142
Growth			3.50%	4.09%	8.30%	2.45%	0.96%	-1.37%	-13.56%	21.37%	-7.38%	3.23%	5.85%	31.61%	3.63%	
Japan	359,501	30,840	31,104	31,295	33,223	34,858	35,515	35,348	30,341	36,807	33,354	33,682	35,501	44,813	46,139	852,312
Germany	202,666	9,095	9,337	10,235	11,260	11,280	11,444	10,779	9,011	10,005	9,051	8,914	9,000	12,363	11,920	346,360
United Kingdom	91,001	3,464	3,570	3,662	3,961	3,831	3,622	3,443	3,142	3,581	3,292	3,087	3,174	4,302	4,307	141,439
France	77,906	3,674	3,820	3,819	4,041	4,035	3,868	3,380	2,866	3,431	3,130	3,163	3,140	4,450	4,531	129,254
Canada	47,688	2,973	3,226	3,419	3,606	3,431	3,427	3,374	2,894	3,572	3,318	3,393	3,655	4,852	5,012	97,840
Taiwan	13,199	3,100	3,693	4,670	5,371	5,431	5,298	5,938	5,118	6,361	6,128	6,339	6,642	8,239	8,781	94,308
Korea	8,033	3,259	3,562	3,314	3,538	3,786	3,944	4,428	4,352	5,908	6,295	7,548	8,762	11,671	12,262	90,662
Switzerland	40,757	1,279	1,279	1,322	1,420	1,364	1,308	1,277	995	1,201	1,035	1,112	1,208	1,608	1,663	58,828
Italy	29,355	1,584	1,492	1,714	1,709	1,751	1,722	1,584	1,296	1,480	1,302	1,357	1,346	1,798	1,885	51,375
Sweden	25,660	1,225	1,401	1,577	1,741	1,675	1,521	1,290	1,123	1,243	1,061	1,060	1,014	1,434	1,711	44,736
Netherlands	24,216	1,226	1,247	1,241	1,332	1,391	1,325	1,273	993	1,323	1,250	1,330	1,288	1,614	1,743	42,792
Australia	9,960	720	707	705	876	859	902	953	910	1,325	1,265	1,291	1,221	1,748	1,919	25,361
Israel	5,879	754	743	783	970	1,040	1,193	1,028	924	1,218	1,107	1,116	1,404	1,819	1,981	22,009
Belgium	9,631	693	648	694	718	772	622	612	519	625	520	510	594	820	802	18,730
Finland	5,740	595	649	618	732	809	865	918	720	950	850	824	864	1,143	951	17,228
Austria	9,393	387	479	505	589	530	592	540	463	577	457	464	503	727	753	16,959
China	636	72	90	119	195	289	297	403	402	661	772	1,225	1,655	2,657	3,174	12,647
Denmark	5,600	392	487	436	479	426	529	414	358	439	388	391	390	605	728	12,062
Spain	3,131	248	222	270	269	303	309	264	373	295	268	303	317	414	469	7,355
India	575	85	112	131	178	248	342	363	384	481	546	634	679	1,098	1,234	7,091

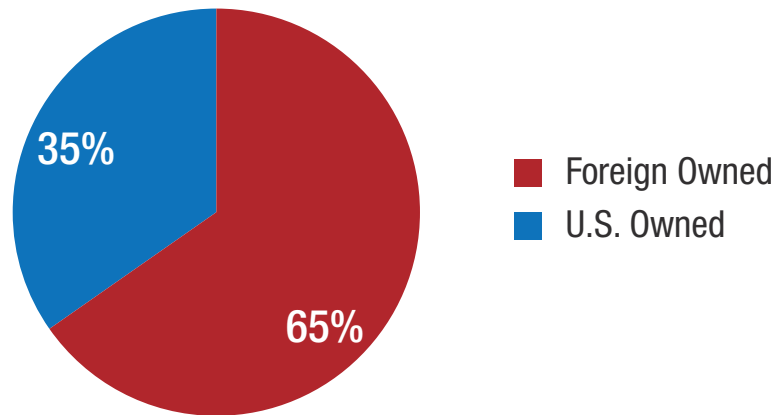
Granted Patents In U.S. By Year



Top 10 Companies Granted U.S. Patents, 2012⁵⁶

Company	Patents	HQ
International Business Machines Corporation	6,478	USA
Samsung Electronics Co.	5,081	Korea
Canon Kabushiki Kaisha	3,174	Japan
Sony Corporation	3,032	Japan
Panasonic Corporation	2,769	Japan
Microsoft Corporation	2,613	USA
Toshiba Corporation	2,447	Japan
Hon Hai Precision Industry	2,013	Taiwan
General Electric Company	1,652	USA
LG Electronics	1,624	Korea

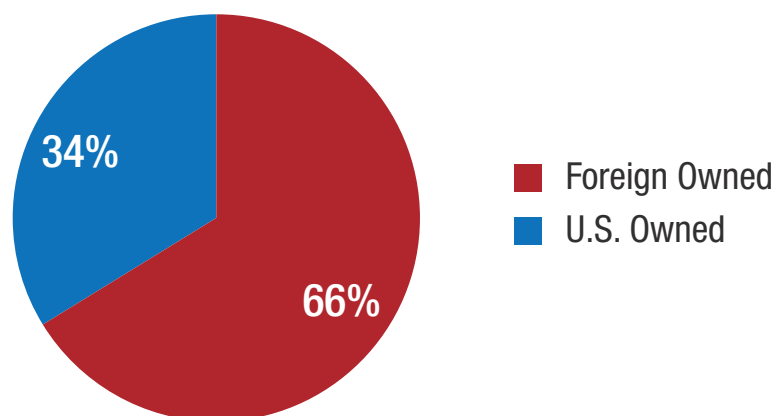
Top 10 Companies Granted U.S. Patents By Parent Headquarters, 2012



Top 10 Companies Granted U.S. Patents, 2011⁵⁷

Company	Patents	HQ
International Business Machines Corporation	6,148	USA
Samsung Electronics Co.	4,868	Korea
Canon Kabushiki Kaisha	2,818	Japan
Panasonic Corporation	2,533	Japan
Toshiba Corporation	2,451	Japan
Microsoft Corporation	2,309	USA
Sony Corporation	2,265	Japan
Seiko Epson Corporation	1,525	Japan
Hitachi	1,455	Japan
General Electric Company	1,444	USA
LG Electronics	1,404	Korea

Top 10 Companies Granted U.S. Patents By Parent Headquarters, 2011



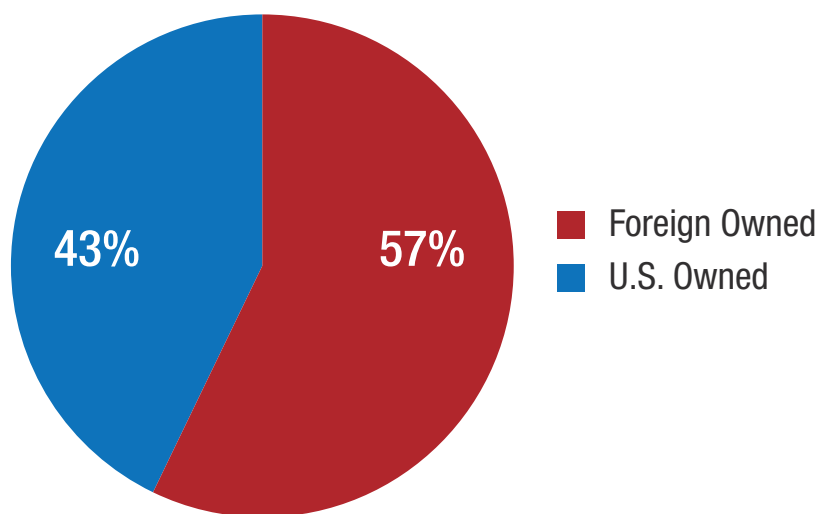
B. Pharmaceutical

Eight of the fifteen largest pharmaceutical companies by global sales are foreign owned. In 2011, 57 percent of the global revenue of these fifteen pharmaceutical companies was generated by foreign-owned companies, down from 58 percent in 2010. In the U.S. market, 51 percent of the revenue of these fifteen companies was generated by foreign-owned companies. The majority of the employees of both the U.S. and the foreign-owned pharmaceutical companies work outside of the United States. For example, 70 percent of U.S.-owned Pfizer's employees work outside of the United States. Eighty-six percent of the employees of German-owned Bayer work outside of the United States.

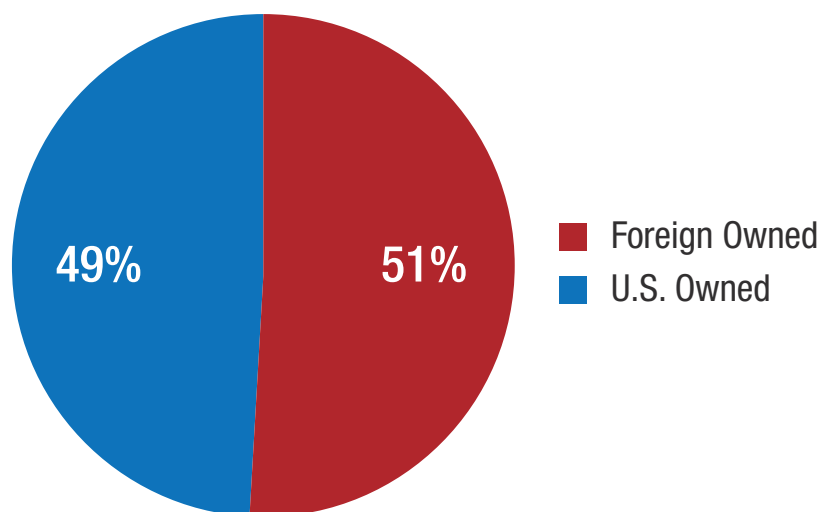
Largest Pharmaceutical Companies: Revenue, 2011⁵⁸

Company	Revenue (\$B)	Revenue in USA (\$B)	Employees	Employees in USA ⁵⁹	HQ
Pfizer	\$57.70	\$25.10	103,700	30,785 ⁶⁰	USA ⁶¹
Novartis	\$54.00	\$19.20	123,686	27,242	Switzerland ⁶²
Sanofi	\$37.00	\$11.80	113,719	18,334	France ⁶³
Merck	\$41.30	\$19.30	86,000	31,000	USA ⁶⁴
Roche	\$34.90	\$14.50	80,129	22,429	Switzerland ⁶⁵
GlaxosmithKleine	\$34.40	\$14.20	97,389	16,707	UK ⁶⁶
AstraZeneca	\$33.60	\$19.90	57,200	17,450	UK ⁶⁷
Johnson & Johnson	\$24.40	\$12.10	117,900	n.a.	USA ⁶⁸
Eli Lilly	\$21.90	\$14.90	38,080	17,280	USA ⁶⁹
Abbott	\$22.40	\$11.50	91,922	n.a.	USA ⁷⁰
Bristol-Myers Squibb	\$21.20	\$10.90	27,000	n.a.	USA ⁷¹
Teva	\$16.70	\$15.10	45,754	9,543	Israel ⁷²
Amgen	\$15.30	\$13.10	17,800	n.a.	USA ⁷³
Bayer ⁷⁴	\$47.26	\$9.06	111,800	15,800	Germany ⁷⁵
Takeda	\$15.20	\$6.60	18,498	n.a.	Japan ⁷⁶

Largest Pharmaceutical Companies: Global Revenue By Parent Headquarters, 2011



Largest Pharmaceutical Companies: U.S. Revenue By Parent Headquarters, 2011



Largest Pharmaceutical Companies: Revenue, 2010⁷⁷

Company	Revenue (\$B)	Revenue in USA (\$B)	Employees	Employees in USA	HQ
Pfizer	\$58.50	\$27.20	110,600	n.a.	USA ⁷⁸
Novartis	\$42.00	\$18.00	119,418	30,186	Switzerland ⁷⁹
Sanofi	\$40.30	\$12.20	100,763	12,954	France ⁸⁰
Merck	\$39.80	\$18.60	94,000	37,000	USA ⁸¹
Roche	\$39.10	\$13.80	80,653	23,695	Switzerland ⁸²
GlaxosmithKleine	\$36.20	\$15.20	96,461	17,555	UK ⁸³
AstraZeneca	\$33.30	\$19.50	61,000	18,605	UK ⁸⁴
Johnson & Johnson	\$22.40	\$12.90	114,000	n.a.	USA ⁸⁵
Eli Lilly	\$21.10	\$14.30	38,350	17,650	USA ⁸⁶
Abbott	\$19.90	\$10.90	91,440	n.a.	USA ⁸⁷
Bristol-Myers Squibb	\$19.50	\$9.80	28,000	n.a.	USA ⁸⁸
Teva	\$16.10	\$15.90	39,660	8,393	Israel ⁸⁹
Amgen	\$14.70	\$12.70	17,400	n.a.	USA ⁹⁰
Bayer	\$49.01	\$7.87	111,400	16,400	Germany ⁹¹
Takeda	\$14.20	\$6.70	19,654	n.a.	Japan ⁹²

Notes

- ¹Victoria Espinel, U.S. Intellectual Property Enforcement Coordinator, 2010 Joint Strategic Plan on Intellectual Property Enforcement, http://www.whitehouse.gov/sites/default/files/omb/assets/intellectualproperty/intellectualproperty_strategic_plan.pdf, at 1.
- ²See, e.g., Response of NetCoalition and the Computer & Communications Industry Association to the Notice of Inquiry on Copyright Policy, Creativity, and Innovation in the Internet Economy, Dec. 10, 2010 at 6–40, <http://www.policybandwidth.com/briefs>. The term “IP-intensive industries” refers to industries “that are particularly dependent on patent, copyright, or trademark protection.” U.S. Department of Commerce, Intellectual Property and the U.S. Economy: Industries in Focus, 2012, http://www.uspto.gov/news/publications/IP_Report_March_2012.pdf, at 2.
- ³See, e.g., Michael Ryan, Knowledge Diplomacy: Global Competition and the Politics of Intellectual Property, 1998.
- ⁴For a discussion of how overprotection of intellectual property decreases innovation and competition, see Response of NetCoalition and CCIA to the Intellectual Property Enforcement Coordinator’s Request for Comments on the Joint Strategic Plan, 2010, at 16–18.
- ⁵<http://www.hachette.com/en/key-figures.html> and <http://www.publishersweekly.com/pw/by-topic/industry-news/financial-reporting/article/52677-the-world-s-54-largest-book-publishers-2012.html>
- ⁶http://www.bertelsmann.com/bertelsmann_corp/wms41/customers/bmir/pdf/Annual_Report_2011.pdf and <http://www.publishersweekly.com/pw/by-topic/industry-news/financial-reporting/article/52677-the-world-s-54-largest-book-publishers-2012.html>
- ⁷<http://www.publishersweekly.com/pw/by-topic/industry-news/financial-reporting/article/52677-the-world-s-54-largest-book-publishers-2012.html>
- ⁸http://www.pearson.com/content/dam/pearson-corporate/files/cosec/14945_PearsonAR11.pdf and <http://www.publishersweekly.com/pw/by-topic/industry-news/financial-reporting/article/52677-the-world-s-54-largest-book-publishers-2012.html>
- ⁹<http://www.newscorp.com/Report2011/2011AR.pdf> and <http://www.publishersweekly.com/pw/by-topic/industry-news/financial-reporting/article/52677-the-world-s-54-largest-book-publishers-2012.html>
- ¹⁰<http://investors.cbcorporation.com/phoenix.zhtml?c=99462&p=quarterlyearnings> and <http://www.publishersweekly.com/pw/by-topic/industry-news/financial-reporting/article/52677-the-world-s-54-largest-book-publishers-2012.html>
- ¹¹http://www.bertelsmann.com/bertelsmann_corp/wms41/customers/bmir/pdf/BAG_AR_2010_english.pdf and <http://www.publishersweekly.com/pw/by-topic/industry-news/financial-reporting/article/52677-the-world-s-54-largest-book-publishers-2012.html>
- ¹²http://www.lagardere.com/fichiers/fckeditor/File/Relations_investisseurs/Resultats_financiers/resultats_annuels/2011/Lagardere_FY2011_Presentation_DDH_EN.pdf and <http://www.publishersweekly.com/pw/by-topic/industry-news/financial-reporting/article/52677-the-world-s-54-largest-book-publishers-2012.html>
- ¹³http://www.pearson.com/content/dam/pearson-corporate/files/annual-reports/Pearson_AR10.pdf and <http://www.publishersweekly.com/pw/by-topic/industry-news/financial-reporting/article/52677-the-world-s-54-largest-book-publishers-2012.html>
- ¹⁴<http://www.publishersweekly.com/pw/by-topic/industry-news/financial-reporting/article/52677-the-world-s-54-largest-book-publishers-2012.html>
- ¹⁵<http://www.publishersweekly.com/pw/by-topic/industry-news/financial-reporting/article/52677-the-world-s-54-largest-book-publishers-2012.html>
- ¹⁶<http://www.newscorp.com/Report2010/AR2010.pdf>
- ¹⁷<http://bi.galegroup.com.esc-web.lib.cbs.dk/essentials/article/GALE%7CI2502042295/caf80283320dee5903caa5f37efaa3e7?u=cbs>
- ¹⁸<http://bi.galegroup.com.esc-web.lib.cbs.dk/essentials/article/GALE%7CI2502042292/16bb18a81f8c2c2b9beca222753cdc6e?u=cbs>
- ¹⁹http://en.wikipedia.org/wiki/List_of_best-selling_fiction_authors
- ²⁰<http://www.publishersweekly.com/pw/by-topic/industry-news/bookselling/article/53007-the-best-selling-books-of-2012-so-far.html>; <http://www.amazon.com/gp/bestsellers/2012/books>; <http://www.usatoday.com/story/life/books/2013/01/16/100-best-selling-books-of-2012/1839803/>
- ²¹The top STM/Professional publishers are from Simba information’s Global Professional Publishing 2010–2011, where the professional industry (Legal, Scientific and Technical, Medical and Business) is used as benchmark.
- ²²Some of the groups report revenue for North America and not the United States alone.
- ²³http://reporting.reedelsevier.com/media/47777/reed_ar_2011.pdf and <http://www.publishersweekly.com/pw/by-topic/industry-news/financial-reporting/article/52677-the-world-s-54-largest-book-publishers-2012.html>
- ²⁴http://ar.thomsonreuters.com/_files/pdf/2011-Annual-Report-Regulatory-Filing.pdf and <http://www.publishersweekly.com/pw/by-topic/industry-news/financial-reporting/article/52677-the-world-s-54-largest-book-publishers-2012.html>
- ²⁵http://reports.wolterskluwer.com/2011/ar/servicepages/downloads/files/entire_wolterskluwer_ar2011.pdf and <http://www.publishersweekly.com/pw/by-topic/industry-news/financial-reporting/article/52677-the-world-s-54-largest-book-publishers-2012.html>
- ²⁶http://www.wiley.com/legacy/about/corpnews/FY12_10K.pdf
- ²⁷<http://www.springer.com/about+springer/company+information/key+factors?SGWID=0-175806-0-0-0> and <http://www.publishersweekly.com/pw/by-topic/industry-news/financial-reporting/article/52677-the-world-s-54-largest-book-publishers-2012.html>

²⁸ [The graph shows the U.S. revenue for the groups.](#)

²⁹ [The table shows the U.S. revenue for the groups.](#)

³⁰ <http://www.reedelsevier.com/investorcentre/reports%202007/Documents/2011/20-F-final.pdf> and <http://www.publishersweekly.com/pw/by-topic/industry-news/financial-reporting/article/52677-the-world-s-54-largest-book-publishers-2012.html>

³¹ <http://ir.thomsonreuters.com/phoenix.zhtml?c=76540&p=irol-reportsOther> and <http://www.publishersweekly.com/pw/by-topic/industry-news/financial-reporting/article/52677-the-world-s-54-largest-book-publishers-2012.html>

³² http://reports.wolterskluwer.com/2010/ar/servicepages/downloads/files/entire_wolterskluwer_ar2010.pdf and <http://www.publishersweekly.com/pw/by-topic/industry-news/financial-reporting/article/52677-the-world-s-54-largest-book-publishers-2012.html>

³³ http://www.wiley.com/legacy/about/corpnews/fy11_10k.pdf

³⁴ <http://www.publishersweekly.com/pw/by-topic/industry-news/financial-reporting/article/52677-the-world-s-54-largest-book-publishers-2012.html>

³⁵ <http://www.publishersweekly.com/pw/by-topic/industry-news/financial-reporting/article/52677-the-world-s-54-largest-book-publishers-2012.html>

³⁶ http://fep-fee.eu/IMG/pdf/european_book_publishing_statistics_2011-3.pdf and <http://web.ebscohost.com.esc-web.lib.cbs.dk/ehost/pdfviewer/pdfviewer?sid=be9f6539-bb38-4677-a232-6bd87a615c48%40sessionmgr15&vid=21&hid=24> and <http://web.ebscohost.com.esc-web.lib.cbs.dk/ehost/pdfviewer/pdfviewer?sid=be9f6539-bb38-4677-a232-6bd87a615c48%40sessionmgr15&vid=21&hid=24>

³⁷ http://en.wikipedia.org/wiki/List_of_best-selling_music_artists

³⁸ <http://www.sony.net/SonyInfo/IR/financial/ar/2012/common/docs/EAR.pdf>

³⁹ http://www.vivendi.com/wp-content/uploads/2012/03/120302_2011_Financial_Report.pdf

⁴⁰ <http://investors.wmg.com/phoenix.zhtml?c=182480&p=irol-newsArticle&ID=1637719&highlight=>

⁴¹ <http://www.sony.net/SonyInfo/IR/financial/ar/report2011/SonyAR11-E.pdf>

⁴² http://www.vivendi.com/wp-content/uploads/2012/03/120302_2011_Financial_Report.pdf

⁴³ <http://investors.wmg.com/phoenix.zhtml?c=182480&p=irol-newsArticle&ID=1637719&highlight=>

⁴⁴ <http://bi.galegroup.com.esc-web.lib.cbs.dk/essentials/article/GALE%7C12502041561/5da81a1d351ec9c56f5d64e8ce5c7187?u=cbs>

⁴⁵ <http://bi.galegroup.com.esc-web.lib.cbs.dk/essentials/article/GALE%7C12502041561/5da81a1d351ec9c56f5d64e8ce5c7187?u=cbs>

⁴⁶ [See imdb.com.](#)

⁴⁷ [See imdb.com. Some of these foreign-born individuals may have become U.S. citizens. Of the 2013 Oscar nominees, three of the nine nominees in the Best Picture category are foreign, as are two of the five nominees in the Actor, Actress, and Director categories, four of the nominees in the Cinematography category, and three of the nominees in the Costume Design and Production Design categories.](#)

⁴⁸ [The movies are ranked by U.S. Box Office according to imdb.com on January 9, 2013.](#)

⁴⁹ <http://www.softwaretop100.org/global-software-top-100-edition-2010>

⁵⁰ <http://bi.galegroup.com.esc-web.lib.cbs.dk/essentials/article/GALE%7CA281971739/eadff8745f2fd9d87cc08fb2bd13db5d?u=cbs>

⁵¹ http://www.vgchartz.com/analysis/platform_totals/

⁵² [Sales are for North America.](#)

⁵³ http://en.wikipedia.org/wiki/Console_wars

⁵⁴ <http://bi.galegroup.com.esc-web.lib.cbs.dk/essentials/article/GALE%7C12502042675/a525fb5d251db1f39a2f2445758cd525?u=cbs>

⁵⁵ http://www.uspto.gov/web/offices/ac/ido/oeip/taf/cst_utl.pdf and <http://www.uspto.gov/about/stratplan/ar/2011/USPTOFY2011PAR.pdf>

⁵⁶ http://ifclaims.com/index.php?page=misc_top_50_2012

⁵⁷ http://www.uspto.gov/web/offices/ac/ido/oeip/taf/topo_11.htm

⁵⁸ <http://www.pharmexec.com/pharmexec/article/articleDetail.jsp?id=773562>

⁵⁹ [Some of the companies report number of employees in North America, not United States.](#)

⁶⁰ [Employee number is from 2009.](#)

⁶¹ <http://www.workingmother.com/best-companies/pfizer> and <http://www.pfizer.com/files/annualreport/2011/financial/financial2011.pdf>

⁶² <http://www.novartis.com/downloads/newsroom/corporate-publications/Novartis-20-F-2011.pdf>


⁶³ http://en.sanofi.com/Images/29804_20F_2011.pdf

⁶⁴ <http://www.merck.com/investors/financials/form-10-k-2011.pdf>. [Merck is now headquartered in New Jersey, but it was originally established in 1891 as a subsidiary of a German company. The subsidiary was confiscated by the U.S. government during World War I.](#)

⁶⁵ http://www.roche.com/investors/annual_reports/annual_reports_2011.htm

⁶⁶ <http://www.gsk.com/content/dam/gsk/globals/documents/pdf/GSK-Annual-Report-2011.pdf>

⁶⁷ http://www.astrazeneca-annualreports.com/2011/documents/pdfs/annual_report_pdf_entire.pdf

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- ⁶⁸ <http://www.investor.jnj.com/2011annualreport/pdf/2011-10-k.pdf>
- ⁶⁹ <http://files.shareholder.com/downloads/LLY/2261573605x0x548541/E8FFDA89-5EC1-4D08-AB37-CD85F4C0863D/English.pdf>
- ⁷⁰ http://media.corporate-ir.net/media_files/irol/94/94004/Proxy_Page/AR2011.pdf
- ⁷¹ <http://www.bms.com/documents/news/publications/2012-Overview-brochure.pdf>
- ⁷² <http://ir.tevapharm.com/phoenix.zhtml?c=73925&p=irol-reportsAnnual>
- ⁷³ <http://www.amgen.com/>
- ⁷⁴ Bayer was originally not on the Pharmexec list, but was added due to high revenue and brand recognition.
- ⁷⁵ http://www.investor.bayer.com/no_cache/reports/
- ⁷⁶ http://www.takeda.com/investor-information/annual/pdf/index/ar2011_en.pdf
- ⁷⁷ <http://www.pharmexec.com/pharmexec/article/articleDetail.jsp?id=719596>
- ⁷⁸ <http://xfinity.comcast.net/slideshow/finance-saveuseconomy/pfizer%20/>
- ⁷⁹ <http://www.novartis.com/downloads/newsroom/corporate-publications/Novartis-20-F-2011.pdf>
- ⁸⁰ http://en.sanofi.com/Images/29804_20F_2011.pdf
- ⁸¹ <http://www.merck.com/investors/financials/annual-reports/home.html>
- ⁸² http://www.roche.com/investors/annual_reports/annual_reports_2011.htm
- ⁸³ <http://www.gsk.com/content/dam/gsk/globals/documents/pdf/GSK-Annual-Report-2010.pdf>
- ⁸⁴ http://www.astrazeneca-annualreports.com/AZ_AR_100311_single.pdf
- ⁸⁵ <http://www.investor.jnj.com/2011annualreport/pdf/2011-10-k.pdf>
- ⁸⁶ <http://files.shareholder.com/downloads/LLY/2261573605x0x447905/6281D413-C258-488B-ADBE-B35289495F26/English.pdf>
- ⁸⁷ http://media.corporate-ir.net/media_files/irol/94/94004/Proxy_Page/AR2011.pdf
- ⁸⁸ <http://bms.com/documents/news/publications/2011-overview-brochure.pdf>
- ⁸⁹ <http://ir.tevapharm.com/phoenix.zhtml?c=73925&p=irol-reportsAnnual>
- ⁹⁰ <http://www.amgen.com/>
- ⁹¹ http://www.investor.bayer.com/no_cache/reports/
- ⁹² http://www.takeda.com/investor-information/annual/pdf/index/ar2011_en.pdf
- 