

GLOBAL FAIR USE AND FAIR DEALING DECISIONS AVAILABLE ONLINE

Jonathan Band
Deborah Goldman

One of the arguments used by rights holders opposed to the adoption of open-ended fair use or fair dealing provisions outside of the United States is that those jurisdictions would lack a body of case law to guide judges, and it would take decades for such a body of case law to develop. This argument overlooks the fact that those jurisdictions could look to decisions in other jurisdictions with open-ended fair use or fair dealing provisions, such as the United States and Canada, as they develop their own jurisprudence. (Courts in other countries often rely on U.S. decisions in areas where U.S. jurisprudence is very developed, such as software copyright.) Additionally, in cases that fall within the scope of traditional fair dealing, courts could consider decisions from jurisdictions with traditional fair dealing provisions. Significantly, many of the opinions in these decisions are available online. The following tables indicate by jurisdiction the number of opinions discussing fair use or fair dealing that are available through online databases as of July 1, 2013.

OPEN-ENDED FAIR USE AND FAIR DEALING

Country	Database	Number of Cases
United States	LexisNexis	1541
	WestLaw	1666
Canada	LexisNexis	258
	WestLaw	117
	HeinOnline, Canada Supreme Court Reports	136
Hong Kong	www.judiciary.gov.hk/en/legal_ref/judgments.htm	7
	WestLaw	10
Philippines	www.sc.judiciary.gov.ph	5
Israel	LexisNexis	1

TRADITIONAL FAIR DEALING

Country	Database	Number of Cases
United Kingdom	LexisNexis	439
	WestLaw	211
Australia	LexisNexis	246
	WestLaw	86
New Zealand	LexisNexis	74
	http://forms.justice.govt.nz/jdo/search.jsp	6
India	www.liiofindia.org/form/search/search1.html	28
South Africa	LexisNexis	13
	www.saflii.org/cgi-bin/search.pl	1
Malaysia	LexisNexis	3
Ireland	LexisNexis	2
Korea	WestLaw	1
Namibia	www.saflii.org/cgi-bin/search.pl	1