

Fair Dealing Procedure

RATIONALE:

The fair dealing provision in *the Copyright Act* permits the use of a copyright-protected work without permission from the copyright owner or the payment of copyright royalties. To qualify for fair dealing, two tests must be passed.

First, the “dealing” must be for a purpose stated in the *Copyright Act*: research, private study, criticism, review, news reporting, education, satire, and parody. Educational use of a copyright-protected work passes the first test.

The second test is that the dealing must be “fair.” In landmark decisions in 2004 and 2012, the Supreme Court of Canada provided guidance as to what this test means in schools and postsecondary educational institutions.

These guidelines apply to fair dealing in non-profit K–12 schools and postsecondary educational institutions and provide reasonable safeguards for the owners of copyright-protected works in accordance with the *Copyright Act* and the Supreme Court decisions.

TERMINOLOGY:

Consumables: Consumables are materials intended for one-time use. Copying, scanning or printing materials intended for one-time use is strictly prohibited.

“Materials intended for one-time use” are workbooks and exercise books in which a student records answers. These are materials created and intended for each student to have his or her own copy. Once a student completes the answers, these materials are of no use to another student.

Any copying from materials intended for one-time use exposes the person making the copy, the teacher, the school, and the school board to liability for copyright infringement. This prohibition does not apply to reproducibles.

Copyright: A set of exclusive rights, including the right to copy a work, a performance or sound recording.

Copyright Infringement: Violation of copyright through unauthorized copying or use of work or other subject matter under copyright.

Fair Dealing: Fair dealing is a user’s right, outlined in the *Copyright Act* that identifies allowable purposes (or dealings) for the use of copyright-protected materials without permission or payment of copyright royalties.

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Reproducibles: A reproducible is not intended for one-time use, but is sold or provided with the rights holder's authorization to reproduce it for educational use.

PROCEDURES:

1.0 Fair Dealing Guidelines

- 1.1 Teachers, instructors, professors, and staff members in non-profit educational institutions may communicate and reproduce, in paper or electronic form, short excerpts from a copyright-protected work for the purposes of research, private study, criticism, review, news reporting, education, satire, and parody.
- 1.2 Copying or communicating short excerpts from a copyright-protected work under these Fair Dealing Guidelines for news reporting, criticism, or review should mention the source and if given in the source, the name of the author or creator of the work.
- 1.3 A single copy of a short excerpt from a copyright-protected work may be provided or communicated to each student enrolled in a class or course
 - a) as a class handout;
 - b) as a posting to a learning or course management system that is password protected or otherwise restricted to students of a school or postsecondary educational institution;
 - c) as part of a course pack.
- 1.4 A short excerpt means:
 - a) up to 10 per cent of a copyright-protected work (including a literary work, musical score, sound recording, and an audiovisual work);
 - b) one chapter from a book;
 - c) a single article from a periodical;
 - d) an entire artistic work (including a painting, print, photograph, diagram, drawing, map, chart, and plan) from a copyright-protected work containing other artistic works;
 - e) an entire newspaper article or page;
 - f) an entire single poem or musical score from a copyright-protected work containing other poems or musical scores;
 - g) an entire entry from an encyclopedia, annotated bibliography, dictionary, or similar reference work.
- 1.5 Copying or communicating multiple short excerpts from the same copyright-protected work with the intention of copying or communicating substantially the entire work is prohibited.

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- 1.6 Copying or communicating that exceeds the limits in these Fair Dealing Guidelines may be referred to a supervisor or other person designated by the educational institution for evaluation. An evaluation of whether the proposed copying or communication is permitted under fair dealing will be made based on all relevant circumstances.
- 1.7 Any fee charged by the educational institution for communicating or copying a short excerpt from a copyright-protected work must be intended to cover only the costs of the institution, including overhead costs.