

USE OF COPYRIGHT MATERIALS

Background

The fair dealing provision in the *Copyright Act* permits use of a copyright-protected work without permission from the copyright owner or the payment of copyright royalties. The following guidelines apply fair dealing in K–12 schools and provide reasonable safeguards for the owners of copyright-protected works in accordance with the *Copyright Act* and the Supreme Court decisions.

To qualify for fair dealing, two tests must be passed.

First Test: 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.

Second Test: the dealing must be “fair.” In landmark decisions in 2004 and in 2012, the Supreme Court of Canada provided guidance as to what this test means in schools.

Fair Dealing Guidelines

1. Teachers and staff members 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.
2. Copying or communicating short excerpts from a copyright-protected work under these Fair Dealing Guidelines for the purpose of news reporting, criticism, or review are to mention the source and, if given in the source, the name of the author or creator of the work.
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;
 - c. As part of a course pack.
4. A short excerpt means:
 - a. Up to ten percent (10%) of a copyright-protected work (including a literary work, musical score, sound recording, and an audiovisual work);
 - b. One (1) 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.
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.
 6. Copying or communicating that exceeds the limits in these Fair Dealing Guidelines will be referred to a supervisor or other person designated by the Superintendent, or designate, for evaluation. An evaluation of whether the proposed copying or communication is permitted under fair dealing will be made based on all relevant circumstances.
 7. The Division owns copyright on any works produced by any employee in the course of their work.
 9. Students own the copyright on anything that they may create and parental permission to reproduce their work should be obtained in the student in under 16. Student permission is required if the student is 16 or older.
 10. Permission is not required to display student work within the school.
 11. Employees will not be required by their supervisors to perform any service that is a violation of the copyright policy.
 12. Employees may produce works that are in the “public domain”.
 13. The Division will not condone, nor accept responsibility for an employee who willfully and knowingly contravenes the **Copyright Act**.

Procedures

1. Posters outlining the Fair Dealing Guidelines shall be provided by the Associate Superintendent, Business Services and are to be posted above each multi-function or photocopying device.
2. Use of copyrighted materials that do not fall under the Fair Dealing Guidelines is not permitted without the approval of the Superintendent or designate. Where school staff or students wish to use copyrighted materials, they must:
 - a. Obtain permission to copy from the copyright holder; and
 - b. Where requested, a royalty must be paid to the copyright holder.
3. All staff and students that are expected to use copyrighted materials must be aware of the procedures and the guidelines for fair dealing. Teachers are to have knowledge of and be familiar with “Copyright Matters!” available at www.cmec.ca.

December, 2003

Updates: August 2013, February 2020

References:

Copyright Act

Copyright Modernization Act

Council of Ministers of Education (CMEC) Copyright Consortium Guidelines

Copyright Matters! Revised May 2013