

USE OF COPYRIGHTED 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 to 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:
 - 3.1 As a class handout;
 - 3.2 As a posting to a learning- or course-management system that is password protected or otherwise restricted to students;
 - 3.3 As part of a course pack.
4. A short excerpt means:
 - 4.1 Up to ten percent (10%) of a copyright-protected work (including a literary work, musical score, sound recording, and an audiovisual work);
 - 4.2 One (1) chapter from a book;
 - 4.3 A single article from a periodical;

- 4.4 An entire artistic work (including a painting, print, photograph, diagram, drawing, map, chart, and plan) from a copyright-protected work containing other artistic works;
 - 4.5 An entire newspaper article or page;
 - 4.6 An entire single poem or musical score from a copyright-protected work containing other poems or musical scores;
 - 4.7 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. Staff may reproduce works that are in the "Public Domain". When the work is reprinted in a new edition, only the original text is in the "public domain".
 - 7. Copying or communicating that exceeds the limits in these Fair Dealing Guidelines will be referred to a supervisor or other person designated by the Associate Superintendent, Learning Services, for evaluation. An evaluation of whether the proposed copying or communication is permitted under fair dealing will be made based on all relevant circumstances.
 - 8. Any fee charged by the Division for communicating or copying a short excerpt from a copyright-protected work must be intended to cover only the costs of the Division, including overhead costs.
 - 9. The following applies to Video Resources - Public Performance Rights
 - 9.1 Video programs and feature film rentals with public performance rights may only be shown in schools or at Division functions if a site license that covers these titles has been obtained from the distributor.
 - 10. Site licenses can be obtained from Visual Education Center (VEC) and/or Audio Cine Films (ACF).

Procedures

- 1. The Fair Dealing Guidelines 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 Associate Superintendent, Learning Services. Where school staff or students wish to use copyrighted materials, they must:
 - 2.1 Obtain permission to copy from the copyright holder; and
 - 2.2 Where requested, a royalty must be paid to the copyright holder.
- 3. All staff and students who are expected to use copyrighted materials must be aware of the procedures and the guidelines for fair dealing.

- 3.1 Information regarding digital copyright can be found at: www.cmec.ca, The Council of Ministers of Education, Canada (CMEC).
- 3.2 Teachers are to be familiar with the document "Copyright Matters" which is available at: www.cmec.ca.

4. Employee Work

- 4.1 The Superintendent or designate may enter into an agreement with others to produce, in part or in whole, a work for the Division. This agreement will specifically address copyright of the work produced.
- 4.2 The Division may enter into an agreement with a private publisher to publish Division material for sale and distribution.
- 4.3 The Division owns copyright of all works produced by employees as a part of their employment.

5. Student Work

- 5.1 Students own the copyright to everything they create. Parent/guardian permission to reproduce student work will be obtained if the student is under 16 years of age. Students 16 and over may provide permission for their own work to be reproduced.
- 5.2 Permission is not required to display student work within the school.
- 5.3 Permission is not required to display student work outside the school at such sites as Teachers' Conventions, conferences, public libraries or Division Office, provided the student's name is not visible on the work. If the student's name is visible. FOIP considerations apply.
- 5.4 At the time of registration, the Principal will collect and file permission from parents/guardians/students to record and/or tape their children for possible performance.

- 6. Photographs taken by students for school publications with equipment and supplies provided by the school will be deemed to be the property of the school.

Reference: Copyright Act
Copyright Modernization Act
Council of Ministers of Education (CMEC) Copyright Consortium Guidelines
Copyright Matters!