

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 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 (2) 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: is that 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 encyclopaedia, 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 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. 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.

Procedures

1. Posters outlining Fair Dealing Guidelines (overview available at http://www.cmec.ca/docs/copyright/Fair_Dealing_Guidelines_EN.pdf) shall be provided by the Secretary Treasurer 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:
 - 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 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 CMEC and the Council of Ministers of Education, Canada's online Copyright Decision Tool available at CMEC

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Reference: Section 33, 52, 53, 196, 197, 222 Education Act
Copyright Act
Copyright Modernization Act
Council of Ministers of Education (CMEC) Copyright Consortium Guidelines
Copyright Matters!