

Administrative Procedure 190

USE OF COPYRIGHTED MATERIALS

Background

Copyright rules for educators have changed significantly in recent years. While teachers have new opportunities to use copyright-protected materials in their lessons, they also have responsibilities. There are limits to what can be copied and communicated in the classroom. Teachers must know what they can and cannot do with the copyright-protected works of others. Failure to comply with [copyright law](#) can result in a teacher, school, or school board being sued for copyright infringement. The fair dealing provision in Canada's copyright law permits teachers to copy and communicate short excerpts from copyright-protected works provided the dealing is "fair."

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

Procedures

1. 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. To qualify for fair dealing, two tests must be passed.
 - 1.1 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.
 - 1.2 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 post secondary educational institutions.

2. **Fair Dealing Guidelines**
 - 2.1 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.

- 2.2 Copying or communicating short excerpts from a copyright-protected work under these [Fair Dealing Guidelines](#) for the purpose of news reporting, criticism, or review should mention the source and, if given in the source, the name of the author or creator of the work.
 - 2.3 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.
 - 2.3.1 As a class handout.
 - 2.3.2 As a posting to a learning or course-management system that is password protected or otherwise restricted to students of a school or post secondary educational institution.
 - 2.3.3 As part of a course pack.
 - 2.4 A short excerpt means:
 - 2.4.1 Up to 10 per cent of a copyright-protected work (including a literary work, musical score, sound recording, and an audiovisual work).
 - 2.4.2 One chapter from a book.
 - 2.4.3 A single article from a periodical.
 - 2.4.4 An entire artistic work (including a painting, print, photograph, diagram, drawing, map, chart, and plan) from a copyright-protected work containing other artistic works.
 - 2.4.5 An entire newspaper article or page.
 - 2.4.6 An entire single poem or musical score from a copyright-protected work containing other poems or musical scores.
 - 2.4.7 An entire entry from an encyclopedia, annotated bibliography, dictionary, or similar reference work.
 - 2.5 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.
 - 2.6 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.
 - 2.7 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.
3. Posters outlining [Fair Dealing Guidelines](#) shall be provided by the Secretary-Treasurer and are to be posted above each multi-function or photocopying device.

4. Use of copyrighted materials that do not fall under the Fair Dealing Guidelines is not permitted without the approval of the Superintendent. Where school staff or students wish to use copyrighted materials they must:
 - 4.1 Obtain permission to copy from the copyright holder, and
 - 4.2 Where requested, a royalty must be paid to the copyright holder.

5. 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 the Web site to assist teachers in complying with the copyright law: www.fairdealingdecisiontool.ca. This Web site features a fair dealing decision tool that enables teachers to quickly determine whether they can use specific materials in their lessons.

Reference: Section 17, 20, 22, 65, 85 School Act
Copyright Act
Copyright Modernization Act
Council of Ministers of Education (CMEC) Copyright Consortium Guidelines
Copyright Decision Tool

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