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Fair Dealing Guidelines

INTRODUCTION:

“Fair dealing” is a statutory right that is an important component of users’ rights in Canadian copyright law. These Fair Dealing Guidelines govern the application of fair dealing under the university’s *Use of Copyright Materials Policy and Procedure*.

A. About Fair Dealing

Fair dealing allows for the reproduction and use of a reasonable portion of a copyright-protected work without requiring permission from, or a payment of royalties to, the rights-holder, provided that the use, or “dealing”, is fair.

To qualify as fair dealing, two tests must be passed:

- i) The dealing must be for one of the following purposes enumerated in the *Copyright Act*: research, private study, education, parody, satire, criticism, review or news reporting; and
- ii) The dealing must be fair. The fairness of the dealing is assessed in accordance with a number of specific factors set out by the Supreme Court of Canada.

Fair dealing is always available to prospective users of copyright-protected material. However, fair dealing may not always be the best option when alternatives are available. It is important to consider alternatives before choosing to apply fair dealing.

B. Using the institutional Guidelines

The purpose of these Fair Dealing Guidelines is to provide a simple and straightforward approach to making determinations about the application of the fair dealing exception in particular circumstances. Since there is a degree of subjectivity in the legal test for fair dealing, to provide a standardized recommendation about what may be copied under this exception for institutional purposes, the university has established quantitative guidelines for employees when reproducing copyright-protected materials for university activities. These activities will generally involve reproducing and providing access to some or all of a copyright-protected work where the rights in that work are held by another party.

The key considerations around use of the Guidelines are the following:

- i) Individual vs institutional use. These Guidelines have been developed to manage the risks to the university that might arise when copyright-protected materials are reproduced and distributed, or otherwise made available, on behalf of the university. Institutional use would include materials made available by instructors to students as course readings, or materials that might be distributed or made available to staff for administrative purposes.

Using materials for scholarly or research purposes would generally be personal or individual use. Although fair dealing might be applicable to such individual use of copyright-protected materials, these Guidelines are not intended to apply to that use.

- ii) Before considering fair dealing. You may be able to gain an appropriate level of access for your target audience to make use of the materials without applying fair dealing. The material you wish to use may be in the public domain and therefore no longer protected by copyright, or the material may be a licensed library resource that all university CCID holders have access to. It is important to consider whether your intended purpose makes it necessary to actually reproduce and distribute a substantial portion of the work, or whether simply ensuring that access is available, such as through a persistent link to a library resource, will meet your needs.

Please note that in most cases an institutional use of fair dealing will involve reproducing as little of the source work as is practical to serve the purpose and will ensure that, to the extent practical, the reproduced portion is distributed in a way that access to it is secure and limited to the target audience.

While the Guidelines are not intended to be a replacement for the full analysis outlined by the Supreme Court of Canada, use of the Guidelines for the purposes outlined is expected to yield a result consistent with such an analysis in the vast majority of applicable cases.

THE GUIDELINES:

These Guidelines can be applied to all reproductions of copyright-protected works under the university's *Use of Copyright Materials Policy* and *Procedure* where applying fair dealing is found to be the most reasonable option. They are not intended to apply to reproductions made outside the scope of that Policy. Additionally, these Guidelines are not intended to limit reproductions of works in which the university holds the copyright, nor of reproductions made in accordance with the terms of license agreements that apply to specific resources.

Under these Guidelines:

1. Course instructors, faculty, researchers and university employees (users) may reproduce and communicate short excerpts from a copyright-protected work for the purposes of research, private study, education, parody, satire, criticism, review or news reporting.

2. Reproductions or communications of short excerpts for the purpose of news reporting, criticism or review must mention the source and, if given in the source, the name of the author or creator of the work.

3. Users may reproduce a “short excerpt” as indicated in relation to the following copyright-protected works:

- a) up to ten (10) percent of a copyright-protected work (including a literary work, musical score, sound recording or an audiovisual work) [Note: In cases where the work is an anthology or collection that includes complete works that are otherwise available in separate volumes, this may not be applicable. In such cases, please contact the Copyright Office for clarification];
- b) an entire chapter from a book;
- c) an entire article from a periodical publication;
- d) an entire artistic work (including a painting, print, photograph, diagram, drawing, map, chart or plan) from a work containing other artistic works;
- e) an entire article or page from a newspaper or magazine;
- f) an entire single poem or musical score from a work containing other poems or musical scores; or
- g) an entire entry from an encyclopedia, annotated bibliography or similar reference work;

provided that, in each case, no more of the copyright-protected work is reproduced than is required in order to achieve the allowable purpose.

4. Users may NOT reproduce the following:

- a) unpublished works;
- b) proprietary workbooks, work cards, assignment sheets, tests and examination papers;
- c) instruction manuals;
- d) newsletters with restricted circulation intended to be restricted to a fee paying clientele;
- e) business cases which are made available for purchase; or
- f) multiple short excerpts from the same copyright-protected work, with the intention of reproducing or communicating substantially the entire work.

Where the proposed use of copyright-protected material does not fall within these Guidelines, the Copyright Office can assist you with exploring alternatives, including seeking a transactional licence to cover the use of the material. The Copyright Office can also provide assistance with any questions about the implementation or interpretation of these Guidelines.

DEFINITIONS

Any definitions listed in the following table apply to this document only with no implied or intended institution-wide use.

Copyright Act	The federal <i>Copyright Act</i> , RSC 1985 c C-42, including the regulations thereunder and any amendments made thereto.
Copyright Office	A unit of Library and Museums, the Copyright Office centralizes the oversight and management of copyright issues for the University community, providing information and guidance related to copyright laws, policy and procedures. The role of the Copyright Office is the review, development and implementation of best practices related to the use of copyright materials at the University, as well as the review, development and implementation of a communication and education plan to enhance awareness and “copyright literacy” across the University community.
fair dealing	Sections 29, 29.1, and 29.2 of the <i>Copyright Act</i> , introduce and describe fair dealing as an exception to copyright infringement.

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