

Fair Dealing and Copyright: Guidelines for Teaching

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Transition from Access Copyright (AC)

- Expansion of fair dealing in the new Copyright Act;
- Materials (books, articles, films) used for teaching, learning, private study, review, criticism, parody, and research are allowable exceptions that meet the fair dealing provisions;
- A significant amount of licensed content is accessible at the Harris Learning Library – Copyright fees are included in the licensing costs;
- Eliminates multiple payments for the same content (ancillary fees paid by students for the Access Copyright Licence, fees paid for licensed library resources, and course pack costs);
- Most Canadian post-secondary institutions have terminated their AC Licence (93%);
- There is no legal requirement to sign the AC Licence.

What is Copyright?

- Canadian copyright law protects works from copyright infringement.
- Copyright is the exclusive right of a copyright owner to produce, reproduce, perform, adapt, translate and communicate a work, and to control the circumstances under which others may use a copyrighted work.
- Copyright infringement: use of a copyrighted work without the permission of the copyright owner; use of that work in ways that only the copyright owner is entitled (i.e. produce, reproduce, perform, adapt, translate, communicate, control the circumstances, sell a reproduced work)
- Penalties can be imposed for copyright infringement; depending on the seriousness, penalties could include fines, payment of damages
- First step when infringement occurs: cease and desist letters

What is Fair Dealing?

Fair dealing provision in the Act allows for exceptions for educational institutions, libraries, archives, and museums

- balances the rights of copyright owners to control the use of their works while allowing users access to those works
- permits use of a copyrighted work without permission of the owner or payment of copyright royalties for purposes as specified in the Act
- outlines the terms of the use of material for the purposes of research, private study, criticism, review, news reporting, parody, satire and education

Does it qualify for Fair Dealing?

If use qualifies as fair dealing, there is no need to pay a copyright royalty or ask for permission...so how is this determined?

Two tests or factors are considered when determining if use of material qualifies for Fair Dealing:

1. The use or “dealing” of the material must be for research, private study, criticism, review, news reporting, education, satire or parody.

In an educational setting, use or “dealing” of materials is generally covered by this first test

Does it qualify for Fair Dealing?

2. The dealing must be “fair” in consideration of the following nine factors:

- Provide appropriate bibliographic citation;
- Person acting under the authority of an educational institution must have no motive of gain and recover no more than the costs, including overhead costs, associated with doing the act;
- Person acting under the authority of an educational institution may reproduce, display, translate, perform in public on the premises of the educational institution, use the work as required for a test or an examination, communicate by telecommunication to the public;

Does it qualify for Fair Dealing?

- Character of the proposed reproduction, including whether it involves single or multiple copies and whether the copies are destroyed after it is used for its specific intended purpose;
- The amount of the dealing, including the proportion of the work that is proposed to be copied and the importance of that excerpt in relation to the whole work;
- Alternatives to copying the work, whether there is a non-copyrighted equivalent available;
- Nature of the work, whether it is published, unpublished, in the public domain;
- Reproduction as a necessity for the preservation of the work;
- Effect of copying the work: will the copy compete with the commercial market of the original work.

Six Point Fair Dealing Test:

- Purpose of the use of content: education, research, private study, criticism, review, news reporting, parody, and satire, *or* is the use for commercial purposes?
- Character of the dealing: number of copies being made, distribution of content, limited or widely distributed? Will the use be ongoing or is it a one-off or isolated use?
- Importance/ Amount of Work Copied: is a significant excerpt or portion of the content being copied, such the whole work, or is the amount limited or a small part of the work?
- Effect of Dealing on the Original Work: will the use be competing with the original work? Would use deter someone from purchasing the original work? Or does use cause little or no detriment to the original work?
- Nature of the Work: is the work confidential? Unpublished? Published in the public interest intended for wide distribution and does not require permission? Is the work in the Public Domain?
- Available Alternatives: consider the purpose for the use of the content; are there alternative options to achieve the same purpose?

Guidelines for instructors

- Review the Six Point Fair Dealing Test before reproducing and/or distributing material
- Allowable uses:
 - material in the Public Domain; freely available on the internet; an Open Access publication; identified with the Creative Commons symbol, can be reproduced and distributed
 - showing videos or DVDs in class; displaying images on overheads for class discussion, instruction, exams; mash-ups of images
- Uses that may be allowable depending on the item, licensing, format, and reasons for use/distribution:
 - streaming video; YouTube videos; format shifting; reading packages; selected readings in online courses

Remember to provide citations for the source

Reading Packages for your class

- Staff will review your Reading Package and compare requested materials with library holdings to determine terms of use for each resource
- Based on that review, options will be suggested, such as:
 - Provide students with the citation – they will be able to access the resource through the library’s holdings;
 - Embed a persistent link to the resource in Blackboard or D2L;
 - Include resource in course materials printed through Print Plus for cost of reproduction;
 - Obtain permission from publisher to reproduce;
 - Place item on reserve at the library;
 - Explore other options and alternatives

Questions and further information

Further information available from:

- Library webpage:

<http://www.eclibrary.ca/library/content/fair-dealing-and-copyright>

- 6 point fair dealing test interactive assessment tool:

<http://fairdealing.eclibrary.ca/>

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This information is intended to provide guidance; it should not be interpreted as legal advice