

Application of the Fair Dealing Policy for Universities to Teaching and Research by University Faculty

This document provides guidance on the application of the Fair Dealing Policy for Universities (“Fair Dealing Policy”) to copying and communicating of copyright-protected works by faculty members (including part-time and adjunct faculty) in the course of their teaching and research. It also applies to students employed by the university as teaching assistants or instructors and to postdoctoral fellows for copying and communicating copyright-protected works done during the course of their employment.

A. Copyright Infringement and Exemptions

It is an infringement of copyright to copy all or a substantial part¹ of a copyright-protected work or to communicate all or a substantial part of a copyright-protected work to the public² by telecommunication without the consent of the holder of copyright, unless copying or communicating the work falls within one of the exemptions in the *Copyright Act*. Examples of a communication of a work to the public by telecommunication include emailing a work to more than one student and transmitting a work posted to a learning management system (“LMS”) to more than one student. The exemptions in the *Act* include exemptions for fair dealing, displaying a work for the purposes of education or training, and recording a lesson and communicating the recording to the public by telecommunication for educational or training purposes.

B. Fair Dealing

Copying and communicating works pursuant to the Fair Dealing Policy fall within the fair dealing exemption in the *Copyright Act* and therefore do not infringe copyright. There is no need to obtain the consent of the holder of copyright for those acts. The Fair Dealing Policy permits copying and communicating short excerpts of copyright-protected works by the university (including its faculty members) subject to certain safeguards to protect the interests of holders of copyright.

¹ For a discussion of what constitutes a substantial part of a copyright-protected work and the ability to freely use an insubstantial part of a copyright-protected work see the Fair Dealing Policy for Universities: General Application to be found here <http://www.copyright.mcmaster.ca/content/fair-dealing-policy>

² In general, a communication is to the public, if the recipients are not restricted to individuals that are purely in a domestic relationship, i.e. a family relationship.

Definition of Short Excerpt

Section 4 of the Fair Dealing Policy defines a short excerpt as follows:

4. A short excerpt means:
 - (a) up to 10% of a copyright-protected work (including a literary work, musical score, sound recording, and an audiovisual work)
 - (b) one chapter from a book
 - (c) a single article from a periodical
 - (d) an entire artistic work (including a painting, print, photograph, diagram, drawing, map, chart, and plan) from a copyright-protected work containing other artistic works
 - (e) an entire newspaper article or page
 - (f) an entire single poem or musical score from a copyright-protected work containing other poems or musical scores
 - (g) an entire entry from an encyclopedia, annotated bibliography, dictionary or similar reference work

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

Teaching

Under the Fair Dealing Policy a copy of a short excerpt of a copyright-protected work may be made by or on behalf of a faculty member for the purpose of teaching students. A faculty member or his or her proxy may:

- provide a copy of the short excerpt to students enrolled in a course of study as a handout;
- email a copy of the short excerpt to students enrolled in a course of study;
- post a copy of the short excerpt on an LMS stored on a secure server or other device (e.g. password protected) that is only accessible by students enrolled in a course, unit or program of instruction;

- include a copy of the short excerpt in a course pack sold to students enrolled in a course of study;
- include a copy of the short excerpt in a lecture or classroom presentation such as a PowerPoint presentation presented to students enrolled in a course of study; and
- display a copy of the short excerpt in a classroom to students enrolled in a course of study.

In each case, a copy of the short excerpt may also be provided or made available as required to another faculty member and to university staff.

Additional information concerning the posting of a copy of a short excerpt of copyright-protected works to an LMS and including such a copy in a course pack are set out respectively in the document Application of the Fair Dealing Policy for Universities to Learning Management Systems to be found [here](#) and the document Application for the Fair Dealing Policy for Universities to the Production and Sale of Course Packs to be found [here](#). Special circumstances relating to the copying and performance of audiovisual works (e.g. YouTube videos) and musical works are set out respectively in the document Application of the Fair Dealing Policy for Universities to Audiovisual Works to be found [here](#) and the document Application of the Fair Dealing Policy for Universities to Musical Works to be found [here](#).

As a safeguard to protect the interests of holders of copyright, the work from which the copy of the short excerpt is made must be in the lawful possession of the university or a faculty member. This would include a work in the collection of the university library or a faculty member, a work borrowed by the university library or faculty member through an inter-library loan, or a short excerpt that is copied and communicated to the university or a faculty member under fair dealing.

The Fair Dealing Policy does not permit copying or communicating a copyright-protected work for a lecture or presentation that is open to the general public, i.e. a lecture or presentation that is not restricted to students specifically enrolled in a course of study. Depending on the circumstances the fair dealing exemption may however apply where the lecture or presentation is open to the public. For information about whether the exemption applies in particular circumstances contact McMaster's Copyright Officer at copyright@mcmaster.ca

Research

Under the Fair Dealing Policy a copy of a short excerpt of a copyright-protected work may be made for use by a faculty member in conducting research on a specific topic of enquiry or for inclusion in a personal collection of research resources. The faculty member may share a copy of the short excerpt with faculty and students both within the university and within another university with whom the faculty member is engaged in collaborative research. In sharing a copy of the short excerpt, the faculty member may email the copy to the students and other faculty member, or post the copy to a website on a secure server or other device (e.g. password protected), provided that the website is secured and is only accessible by those faculty members and students with whom the faculty member is conducting collaborative research.

Safeguard

As a safeguard to protect the interests of holders of copyright, the copying or communicating of multiple short excerpts from the same copyright-protected work for the purpose of teaching or research with the intention of copying or communicating substantially the entire work is prohibited.

C. Exemption for Displaying a Work

Section 29.4(1) of the *Copyright Act* provides an additional exemption to infringement of copyright. Pursuant to this section it is not an infringement of copyright to reproduce a copyright-protected work, or do any other necessary act, in order to display the work on the premises of a university for the purpose of education or training. This exemption extends beyond fair dealing in that the exemption permits the display of more than a short excerpt of a work. There is however a limitation on the section 29.4(1) exemption. The exemption does not apply, except for the making of a manual reproduction (e.g. on a white board), if copies of the work are available for sale in Canada within a reasonable time and at a reasonable price, and the copies can may be located with reasonable effort.

D. Exemption for a Lesson

Section 30.01 of the *Copyright Act* provides an exemption for a lesson. A lesson would include a lecture, and a presentation, such as a PowerPoint presentation, presented in a classroom.

For the exemption in section 30.01 to apply, recordings or reproductions of the lesson must be destroyed within 30 days after the day on which the students enrolled in the course of which the lesson forms part have received their final course evaluation. This would mean that all copies of a presentation stored on an LMS pursuant to the exemption in section 30.01 must be destroyed, and not merely rendered inaccessible to students, within the 30 day period.

The following activities are permissible under section 30.01:

- The exemption permits the posting of a classroom presentation presented in a classroom that contains a work displayed in the classroom pursuant to the exemption in section 29.4(1) to a course website on an LMS stored on a secure server or other device. It also permits communicating the presentation to students in the course of study in which the presentation was given. The communication can be through posting the presentation to a course website on an LMS stored on a secure server or other device that is only accessible by students enrolled in the course of study for which the presentation was made.
- The exemption also permits the recording of a lecture or classroom presentation in which a work is displayed pursuant to the exemption in section 29.4(1) and permits communicating the recording to students in the course of study in which the recording was made. The communication can be through posting a recording to a course website stored on an LMS in the same circumstances described above with respect to a classroom presentation.
- Finally, the exemption would permit the recording of a lecture or classroom presentation during which an audiovisual work or sound recording was performed and the communication to students enrolled in the course of study for which the lecture or presentation was given, including a communication through a course website on an LMS to such students in the same circumstances described above with respect to a classroom presentation. A further requirement with respect to an audiovisual work and a sound recording is that the audiovisual work and the sound recording is not an infringing copy or the person responsible for the performance had no reasonable grounds to believe that the audiovisual work or sound recording was an infringing copy.

E. Relationship between Fair Dealing and the Exemptions for Displaying a Work and a Lesson

Fair dealing and the exemptions for displaying a work and a lesson are distinct and separate exemptions under the *Copyright Act*. The Fair Dealing Policy may apply in circumstances in which these latter two exemptions also apply. For example, a faculty member may post to his or her course website on the university LMS a classroom presentation which includes a short excerpt of a copyright-protected work. The faculty member can rely on the Fair Dealing Policy for posting the classroom presentation rather than the exemption for a lesson and not have to destroy the classroom presentation within the 30 day period as required by section 30.01. If, on the other hand, the classroom presentation contains more than a short excerpt of a copyright-protected work, the faculty member cannot rely on the Fair Dealing Policy and instead must ensure that the exemption for a lesson applies and that the classroom presentation is destroyed within the 30 day period as required by section 30.01. Because of the destruction requirement, a faculty member may prefer following the Fair Dealing Policy rather than the exemption for a lesson and only include a short excerpt in a classroom presentation that is to be posted to a course website.