

Application of the Fair Dealing Policy for Universities to Library Copying

This document provides guidance on the application of the Fair Dealing Policy for Universities (the “Fair Dealing Policy”) to the copying and communication of short excerpts of copyright-protected works by the university library. This document does not include copying or communicating works that may be conducted by a library on behalf of any person, or for document delivery pursuant to the exemptions contained in section 30.2 of the *Copyright Act*. If fair dealing does not apply, one of the exemptions contained in section 30.2 may apply, although certain conditions not applicable to fair dealing may have to be met.

Definition of Short Excerpt

The Fair Dealing Policy permits copying and communicating a short excerpt from a copyright-protected work in the circumstances described in the policy. Section 4 of the 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.

There is a more detailed discussion of what a short excerpt means in the document entitled *Application of the Fair Dealing Policy to University Copying* [**insert URL**].

Document Delivery

The Fair Dealing Policy applies to copying and communicating a short excerpt of copyright-protected work for document delivery to another non-profit university or college library¹. The short excerpt may be provided to the library requesting the copy or directly to the patron of that library. The short excerpt may be copied onto paper or copied and communicated in electronic form, provided that the following safeguards are met:

- (a) if the copy is made onto paper:
 - (i) the university library making the copy has received from the requesting library written confirmation that the copy is required by a patron of that library for a fair dealing purpose and that the patron is a student, staff member or faculty member of the institution requesting the copy; and
 - (ii) the copy is marked with the following notice:

This copy was made pursuant to the Fair Dealing Policy of the University of which may be found at [**insert URL**]. The copy may only be used for the purpose of research, private study, criticism, review, news reporting, education, satire or parody. If the copy is used for the purpose of review, criticism or news reporting, the source and the name of the author must be mentioned. The use of this copy for

¹ The Fair Dealing Policy was written to clarify fair dealing for access to university resources. Fair dealing has wider application and may be legitimately and reasonably relied upon in other circumstances. For example, subject to a consideration of the facts, fair dealing may apply to an interlibrary loan request from a local public or other non-profit library.

any other purpose may require the permission of the copyright owner.

- (b) if the copy is made and delivered in electronic form:
 - (i) the safeguard referred to in (a)(i);
 - (ii) the notice referred to in (a)(ii) be on the electronic copy or be otherwise displayed to the university or college library and the library patron; and
 - (iii) any intermediate paper copy used to make the electronic copy is destroyed promptly after the electronic copy is transmitted.

A copy of a short extract of a copyright-protected work copied and communicated to a university library under fair dealing is a lawful copy. The receiving library may further copy and communicate the short excerpt pursuant to the Fair Dealing Policy (e.g. for posting on a library reserve system – see below).

Library Reserve

The Fair Dealing Policy also applies to copying and communicating a short excerpt of a copyright-protected work for library reserve. The short excerpt may be copied onto paper, or copied and communicated in electronic form, from any copyright-protected course materials, including a course pack, provided that the following safeguards are met:

- (c) if the copy is made onto paper:
 - (i) a request to put the short excerpt on library reserve is made by or on behalf of a faculty member and in respect of a specific course or program of instruction;
 - (ii) the number of copies made does not exceed the number of students enrolled in the course of instruction;
 - (iii) the copy is used only for the purpose of library reserve by students enrolled in the university; and

- (iv) the copy is marked with the following notice:

This copy was made pursuant to the Fair Dealing Policy of the University of which may be found at **[insert URL]**. The copy may only be used for the purpose of research, private study, criticism, review, news reporting, education, satire or parody. If the copy is used for the purpose of review, criticism or news reporting, the source and the name of the author must be mentioned. The use of this copy for any other purpose may require the permission of the copyright owner.

- (d) if the copy is made in electronic form:

- (i) the safeguards referred to in (c)(i) and (c)(iii);
- (ii) the notice referred to in (c)(iv) be on the electronic copy or be otherwise displayed to students who access the electronic copy; and
- (iii) the electronic copy is maintained on a secure computer or device (e.g. password protected) with access restricted to students enrolled in the university and faculty.

Library Copiers and Scanners

The university does not have control over students and other patrons who have access to photocopiers and scanners in the university library. However, as a protection against copyright infringement by students and other library patrons, the university should post a notice in close proximity to each photocopier or scanner in the university library advising that copyright law governs the making of copies, and the communicating to the public by telecommunication of copyright-protected works; that fair dealing for the purpose of research, private study, education, parody, satire, criticism, review or news reporting is not an infringement of copyright; and that the university is not responsible for infringing copies made by users of the photocopier or scanner. A sample notice is attached as Appendix A.

Appendix A

Notice

Canada's copyright law provides for copyright to subsist in literary, dramatic, musical and artistic works. The law governs the making of photocopies or other reproductions of copyright-protected works and communicating such works to the public by telecommunication. Certain copying and communicating of those works may be an infringement of copyright. Copyright law provides that fair dealing for the purpose of research, private study, education, parody, satire, criticism, review or news reporting is not an infringement of copyright.

The university is not liable for any infringing copies made or communicated using copiers or scanners made available by the university.

The university has adopted a Fair Dealing Policy to assist in determining what may be copied or communicated without infringing copyright. Subject to various qualifications and safeguards, the Fair Dealing Policy permits copying and communicating short excerpts. 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.

For information regarding the Fair Dealing Policy and Canada's copyright law, go to **[insert URL for copyright guidelines]** or contact **[provide contact details for the university's copyright office or officer]**.