

FAIR DEALING GUIDELINES FOR UNIVERSITY FACULTY AND STAFF

The purpose of this document is to provide guidance to faculty and staff at the University about how the Fair Dealing Right applies to copying within the university environment. This document should be read in conjunction with the University's other policies, FAQ and guidelines relating to copyright. We expect all members of the university community to comply with copyright laws.

Introduction

In Canada, original literary, musical, artistic, and dramatic works are protected by copyright. The [Copyright Act](#), governs copyright in Canada, and aims to balance the rights of creators with the rights of users. The [Copyright Act](#), provides copyright owners with the sole right to, among other things, produce, reproduce, publish, or perform a copyrighted work or a substantial part of the copyrighted work. It is an infringement of copyright for anyone else to do one of those things, without the consent of the copyright owner. University faculty and staff are legally required to respect the intellectual property rights of others.

The [Copyright Act](#) provides certain exceptions to copyright infringement, which are regarded as users' rights. Such users' rights are essential to furthering the public interest objectives of the [Copyright Act](#), including encouraging the wider public dissemination of works. One of the most important exceptions is known as "fair dealing". The [Copyright Act](#) provides that fair dealing for the purpose of research, private study, education, parody or satire, criticism or review, or news reporting, does not infringe copyright (the "**Fair Dealing Right**").

The Supreme Court of Canada has established a two-part test for fair dealing:

Step 1: Is the dealing for an allowable purpose specified under the Act, namely research, private study, education, parody or satire, criticism or review, or news reporting (in each case, an "**Allowable Purpose**")?

Step 2: If so, is the dealing fair?

Under Step 1, the relevant perspective from which to consider whether the dealing is for an Allowable Purpose is that of the user, and a large and liberal interpretation must be applied so as not to constrain user rights. This is a relatively low threshold within the post-secondary educational sector, given that education, research, and private study are all Allowable Purposes.

Under Step 2, the Supreme Court has stated that assessing whether a particular instance of copying or dealing may be considered "fair" requires a consideration of all relevant factors, including the following:

- (a) the purpose of the dealing, which requires an objective assessment of the user's real purpose or motive in using the Work (such as a commercial purpose, which may be considered less fair), and whether there are reasonable safeguards in place to ensure that Works are actually being used for an Allowable Purpose;
- (b) the character of the dealing, including whether it involves single or multiple copies, consideration of industry practices, and whether the copy is destroyed after it is used for its specific intended purpose;

- (c) the amount of the dealing from the individual user's perspective, including the proportion of the Work that is proposed to be copied and the importance of the Work;
- (d) alternatives to copying the Work, including whether there is a non-copyrighted equivalent or a realistic alternative available;
- (e) the nature of the Work, including whether it is published or unpublished; and
- (f) the effect of the dealing on the Work, including whether the copy will compete with or otherwise adversely affect the commercial market of, the original Work.

Fair dealing is a matter of impression that depends on the facts of each situation, and the fair dealing factors are not conditions that must be met but non-exhaustive considerations that ought to be weighed in evaluating fairness. The Supreme Court of Canada has also acknowledged that fair dealing guidelines are important to an educational institution's ability to actualize fair dealing for its students, in a matter that is consistent with the balance between users' rights and creators' rights under the [Copyright Act](#). In the educational context, instructors have been recognized in Canadian law to share a symbiotic purpose with their students, to the extent that they provide copies of Works (for the purposes of education, research, and/or private study) to facilitate the Fair Dealing Rights of each of their individual students.

Issues to Consider before Copying

It may not always be necessary to rely on the Fair Dealing Right, depending on the circumstances. Please consider each of the following threshold questions, before considering whether your copying constitutes fair dealing:

- (a) Is the Work protected by copyright?

Copyright exists in every original literary, musical, artistic, and dramatic work. However, copyright subsists only for the period of time prescribed by the [Copyright Act](#). After its term of copyright protection has expired, a Work is said to be in the public domain. Determining whether a Work is in the public domain can be complicated, however, as the duration of copyright differs depending on a Work's authorship and format. Please see the public domain guide on the University's copyright website or for more information, please contact the Copyright and Scholarly Communications Librarian at copyright@uregina.ca if you need assistance to determine whether a Work is in the public domain. If a Work is in the public domain, you are free to use it without restriction, and there is no need to consider fair dealing. However, if in doubt, you should presume that that Work is protected by copyright.

- (b) Does the University have an existing license that permits copying of the Work?

The University, through the Library, has existing license agreements with various publishers that may allow Teaching Staff and Other Staff to copy and use Works in accordance with those license terms. Please contact the Head, Library Collections Management and Services at Barbara.Nelke@uregina.ca if you need assistance to determine whether a Work is licensed by the University. If the Work that you wish to use is licensed, then you can proceed to copy the Work as specifically permitted by the license.

- (c) Is the use permitted by any other statutory exception under the [Copyright Act](#)?

In addition to the Fair Dealing Right, there are other exceptions under the [Copyright Act](#) that allow certain reproduction, performance and/or communication of Works to be done for specific educational purposes. Please see sections 29.4 to 30.05 of the [Copyright Act](#), or the University's copyright website for more information about these educational exceptions.

The following Fair Dealing Guidelines have been prepared to provide direction and guidance to Teaching Staff and Other Staff as to how the Fair Dealing Right applies to certain copying at the University, and to provide reasonable safeguards for the rights of the copyright-holders of protected Works.

Guidelines

These Fair Dealing Guidelines should not be considered a definitive formula for determining whether something qualifies as “fair dealing”. Fair dealing is case-specific and depends on context. There may be exceptional or unusual situations for which more guidance is required. The Fair Dealing Right may permit certain copying that is not specifically described under these Fair Dealing Guidelines. If you have a request for copying that requires further support, please contact the Copyright and Scholarly Communications Librarian at copyright@uregina.ca. The Copyright and Scholarly Communications Librarian will assist you in determining whether the proposed copying falls within the Fair Dealing Right, considering all relevant factors.

Subject to the following criteria being met, Teaching Staff and Other Staff may copy or communicate in paper or electronic form, Short Excerpts (defined below) from a Work for any one or more of the Allowable Purpose, which is either:

1. The copy must be a “**Short Excerpt**” containing no more of a Work than is required in order to achieve the Allowable Purpose, which is either:
 - (a) up to 10% of a Work; or
 - (b) no more than:
 - (i) one chapter from a book;
 - (ii) a single article from a periodical;
 - (iii) an entire artistic work (including a painting print, photograph, diagram, drawing, map, chart and plan) from a Work containing other artistic works;
 - (iv) an entire newspaper article or page;
 - (v) an entire entry from an encyclopedia, annotated bibliography, dictionary or similar reference work;
 - (vi) a single excerpt from an anthology or collection (for example, a poem, short story, musical work, play), unless the excerpt is commercially available as a stand-alone work,

Whichever is greater.

2. If you wish to make a copy that does not meet the requirements set out in Section 1 of these Fair Dealing Guidelines, please contact the University's Copyright and Scholarly Communications Librarian at copyright@uregina.ca for further guidance.

3. A single copy of a Short Excerpt from a Work may only be provided to students registered, enrolled or engaged in a course, unit or program of academic, continuing, professional or vocational study administered or hosted by the University, which may include a person who is granted deferred standing in a course, as follows:
 - (a) as a class handout;
 - (b) as a posting to a learning or course management system or e-reserves system that is password protected or otherwise restricted to, and accessible only by, students in the specific university course, unit or program (in each case, a “LMS”),and it is recommended that (if practical) that each copy, or the LMS, includes a notice indicating that Short Excerpts being copied in reliance on the Fair Dealing Right, and advising students to only use materials for their personal Allowable Purposes, and not to communicate or share materials with others.
4. Where the Fair Dealing Right allows the copying of only a portion of a Work, no member of the Teaching Staff or Other Staff may make copies of multiple Short Excerpts with the effect of exceeding the copying limits set out in Section 1 of these Fair Dealing Guidelines.
5. Teaching Staff and Other Staff may not obtain a Work for copying under these Fair Dealing Guidelines by circumventing a technological protection measure (commonly referred to as digital locks), such as a paywall.
6. Any fee charged by the University for copying a Short Excerpt must not exceed the actual costs incurred by the University, including overhead costs, in making the copy.
7. Copies of Short Excerpts made for the purpose of news reporting, criticism, or review must mention the source and, if given in the source, the name of the author(s) or creator(s) of the Work.

Other sources of permission (including consent from a copyright holder) may be required where the copy falls outside of the Fair Dealing Right and the Fair Dealing Guidelines. For assistance in obtaining any permissions* that may be required for such copying or posting, please contact the University’s Copyright and Scholarly Communications Librarian at copyright@uregina.ca.

Definitions:

“Teaching Staff” means any person who teaches at or under the auspices of the University, including without limitation faculty members, adjunct and clinical faculty, lectures, instructors, and teaching assistants.

“Other Staff” means full-time or part-time staff members of the University and any other person who works at or under the auspices of the University who is not Teaching staff.

“Work” means a copyright-protected work, including without limitation a literary work, musical work, artistic work, dramatic work, sound recording, or an audiovisual work, as the case may be.

*If the use of a copyright-protected work is already covered under an existing **library** license, the Dr. John Archer Library will not cover the costs of any additional copyright permissions that may be required. Permission costs will be billed back to the Faculty or Department.

Adapted from Universities Canada's Model Fair Dealing Guidelines for University Faculty and Staff and the University of Saskatchewan Fair Dealing Guidelines.