

COPYRIGHT

Background:

The fair dealing provision in the *Copyright Act* permits the use of a copyright-protected work without permission from the copyright owner or the payment of copyright royalties. The following guidelines apply fair dealing in K-12 schools and provide reasonable safeguards for the owners of copyright-protected works in accordance with the *Copyright Act* and the Supreme Court decisions.

To qualify for fair dealing, two tests must be passed.

- *First Test:* the “dealing” must be for a purpose stated in the *Copyright Act*: research, private study, criticism, review, news reporting, education, satire and parody. Educational use of a copyright-protected work passes the first test.
- *Second Test:* the dealing must be “fair.” In landmark decisions in 2004 and in 2012, the Supreme Court of Canada provided guidance as to what this test means in schools.

Fair Dealing Guidelines

1. Teachers and staff members may communicate and reproduce, in paper or electronic form, short excerpts from a copyright-protected work for the purposes of research, private study, criticism, review, news reporting, education, satire and parody.
2. Copying or communicating short excerpts from a copyright-protected work under these [Fair Dealing Guidelines](#) for the purpose of news reporting, criticism or review are to mention the source and, if given in the source, the name of the author or creator of the work.
3. A single copy of a short excerpt from a copyright-protected work may be provided or communicated to each student enrolled in a class or course:
 - 3.1. as a class handout;
 - 3.2. as a posting to a learning or course-management system that is password protected or otherwise restricted to students; and
 - 3.3. as part of a course pack.
4. A short excerpt means:
 - 4.1. up to 10 per cent of a copyright-protected work, including a literary work, musical score, sound recording and audiovisual work;
 - 4.2. one chapter from a book;
 - 4.3. a single article from a periodical;
 - 4.4. an entire artistic work, including a painting, print, photograph, diagram, drawing, map, chart and plan, from a copyright-protected work containing other artistic works;
 - 4.5. an entire newspaper article or page;
 - 4.6. an entire single poem or musical score from a copyright-protected work containing other poems or musical scores; and

- 4.7. an entire entry from an encyclopedia, annotated bibliography, dictionary or similar reference work.
5. Copying or communicating multiple short excerpts from the same copyright-protected work with the intention of copying or communicating substantially the entire work is prohibited.
6. Copying or communicating that exceeds the limits in these [Fair Dealing Guidelines](#) will be referred to a supervisor or other person designated by the Superintendent for evaluation. An evaluation of whether the proposed copying or communication is permitted under fair dealing will be made based on all relevant circumstances.
7. Any fee charged by the Division for communicating or copying a short excerpt from a copyright-protected work must be intended to cover only the costs of the Division, including overhead costs.

Procedures:

1. Posters outlining [Fair Dealing Guidelines](#) shall be provided by the Secretary-Treasurer and are to be posted above each multi-function or photocopying device.
2. The use of copyrighted materials that do not fall under the [Fair Dealing Guidelines](#) is not permitted without the approval of the Superintendent or designate. Where school staff or students wish to use copyrighted materials, they must:
 - 2.1. Obtain permission to copy from the copyright holder.
 - 2.2. Where requested, a royalty must be paid to the copyright holder.
3. All staff and students who are expected to use copyrighted materials must be aware of the procedures and the guidelines for fair dealing. Teachers are to have knowledge of and be familiar with "[Copyright Matters!](#)" available at www.cmec.ca.
4. Employee Work
 - 4.1. The Division owns the copyright of all works produced by employees as part of their employment.
 - 4.2. The Superintendent or designate may enter into an agreement with others to produce, in part or in whole, work for the Division. This agreement shall specifically address the copyright of the work produced.
 - 4.3. The Division may enter into an agreement with a private publisher to publish Division material for sale and distribution.
 - 4.4. Any student work or images included in a professional teaching portfolio require the consent of the student or parent/guardian using the [Teacher Portfolio Permission Form: Student Work and Images](#) (Form 180-3).
5. Student Work
 - 5.1. Students own the copyright to everything they create. Parent/guardian permission to reproduce student work shall be obtained if the student is under 16 years of age. Students 16 and older may provide permission for their own work to be reproduced.
 - 5.2. Permission is not required to display student work within the school.
 - 5.3. Permission is not required to display student work outside the school at such sites as Teachers' Conventions, conferences, public libraries or central office, provided the student's name is not visible on the work.

- 5.3.1. If the student's name is visible. FOIP considerations apply and the [Consent for Media or Third-Party Use of Student Information](#) (Form 180-1) shall be completed.
- 5.4. At the time of registration, the Principal shall collect and file permission from parents/guardians or students to record and tape their children for possible performance.
- 5.5. Photographs taken by students for school publications with equipment and supplies provided by the school shall be deemed to be the property of the school.

Reference:

Copyright Act

Copyright Modernization Act

Council of Ministers of Education (CMEC) Copyright Consortium Guidelines

[Copyright Matters!](#)

[Fair Dealing Guidelines](#)