

## GUIDE TO FAIR DEALING

Adapted from the *Copyright Toolkit for ACCC Member Institutions* 2014

### **Copyright Act: Sections 29, 29.1 and 29.2**

Fair dealing is a user's right in copyright law permitting use, or "dealing," with a copyright-protected work without permission or payment of copyright royalties. To qualify for fair dealing, two tests must be passed:

**1. The dealing must be for an allowable purpose**

First, the "dealing" must be for a purpose stated in the *Copyright Act*: research, private study, criticism, review, news reporting, **education**, satire, and parody.

**2. The dealing must be fair**

The second test is that the dealing must be "fair." On July 12, 2012, the Supreme Court of Canada issued a landmark decision interpreting what is "fair" in a non-profit educational institution. It is "fair" for an instructor to copy "short excerpts" from a copyright-protected work for students in a class.

### **Guidelines**

1. Teachers, instructors, professors and staff members in non-profit educational institutions 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 this Fair Dealing Policy for the purpose of news reporting, criticism or review should 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:
  - a. as a class handout
  - b. as a posting to a learning or course management system that is password-protected or otherwise restricted to students of a school or post-secondary educational institution
  - c. as part of a course pack

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
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 noted above should be referred to the Corporate Counsel for the College who is designated by Red River College to determine whether the proposed copying or communication is permitted under fair dealing based on all relevant circumstances.
7. Any fee charged by the educational institution for communicating or copying a short excerpt from a copyright-protected work must be intended to cover only the costs of the institution, including overhead costs.

### **Exceeding the limits in the Fair Dealing Guidelines**

Copying or communicating beyond the quantitative limits in the Fair Dealing Guidelines may, or may not, be fair. Where the quantitative limits are exceeded, the dealing must be assessed by the Corporate Counsel, who may refuse authorization because the dealing is unfair.

Having a single person conducting all the fair dealing assessments in an institution will produce consistent assessments and a consistent application of the guidelines. Conducting a fair dealing assessment involves judgement and training, an understanding of legal principles in case law on fair dealing, and the application of the six factors established by the Supreme Court of Canada in the *CCH* decision in 2004. These factors are:

- i. the purpose of the dealing,
- ii. the character of the dealing,
- iii. the amount of the dealing,
- iv. alternatives to the dealing,
- v. the nature of the work, and,
- vi. the effect of the dealing on the work.