

Date of Issue: June 21, 2013**Effective:** Until revoked or modified**Subject:** USE OF COPYRIGHT-PROTECTED WORKS FOR EDUCATION**Application:** Directors of Education
Supervisory Officers and Secretaries of School Authorities
Principals of Elementary Schools
Principals of Secondary Schools
Principals of Provincial and Demonstration Schools

PURPOSE

The purpose of this memorandum is to set out the recommended guidelines that describe the conditions and limits of fair dealing for education. It also describes the roles and responsibilities of school boards¹ regarding the educational use of copyright-protected works in compliance with the Copyright Act, including uses that are outside permitted provisions. This memorandum also provides recommended compliance strategies for boards.

BACKGROUND

The Copyright Act (R.S.C. 1985) is the federal statute that governs copyright law in Canada. The act is intended to balance the interests that people have in using copyright-protected works with the right of creators to receive payment for the use of those works.

The Copyright Act contains many users' rights provisions that allow the use of a copyright-protected work for specific purposes. One of these users' rights is known as "fair dealing".

On June 29, 2012, the Copyright Act was amended with the passage of the Copyright Modernization Act (S.C. 2012, c.20). A key amendment expanded the fair dealing provision to identify education as one of the eligible purposes for fair dealing. This means that all employees in elementary and secondary school settings will be able to use copyright-protected works *within set conditions and limits without obtaining permission and without paying a fee to the copyright owner or to a copyright collective*.

The Supreme Court of Canada's decision of July 12, 2012, clarified that educators may copy "short excerpts" of copyright-protected works for students in their classes. The court's decision complements the addition of education as an eligible purpose for fair dealing in the Copyright Act.

1. In this memorandum, *school board(s)* and *board(s)* refer to district school boards and school authorities.

DEFINITIONS OF TERMS

The following are definitions of terms, as they are used in this memorandum.

copyright owner. A person or a company who owns any of the exclusive rights of copyright in a work, or a representative of the copyright owner.

copyright collective. A copyright collective society, or an organization that administers the rights of copyright owners and can grant permission to use their works and set the conditions and charge fees for that use.

fair dealing. In copyright law, a user's right that permits the use of a copyright-protected work for certain purposes, including for education, without obtaining permission and without paying a fee to the copyright owner.

use. The reproduction or communication of a copyright-protected work, in paper or electronic form.

user. The person who reproduces or communicates a copyright-protected work, in paper or electronic form.

users' rights. Provisions in the Copyright Act that permit use of a copyright-protected work under certain conditions and limits, without obtaining permission and without paying a fee to the copyright owner. Users' rights include fair dealing.

ROLES AND RESPONSIBILITIES OF SCHOOL BOARDS REGARDING COMPLIANCE WITH THE COPYRIGHT ACT

Boards meet their legal responsibilities under the Copyright Act by ensuring that each use of a copyright-protected work meets one of the following conditions:

- The use falls within the "Fair Dealing Guidelines", as outlined in Appendix A.
- The use falls within another Copyright Act provision, as outlined in Appendix B.
- If the use does not fall within any provision outlined in Appendix A or Appendix B, a process for obtaining permission and paying a transaction fee for the use has been followed (see "Uses outside Permitted Provisions" on page 3 of this memorandum).

Fair Dealing

In order to obtain the full benefit of fair dealing in accordance with the Copyright Act, school boards implemented the recommended "Fair Dealing Guidelines" as of December 31, 2012. These guidelines are included in Appendix A to this memorandum. The "Fair Dealing Guidelines" *describe the conditions and limits of fair dealing for education*, and were provided to all boards in the fall of 2012 by their respective provincial trustees' association. The guidelines were prepared for the Copyright

Consortium of the Council of Ministers of Education, Canada (CMEC) by their legal counsel, and are a valuable tool designed to help non-profit educational institutions across Canada comply with the fair dealing provision.

School boards should incorporate the “Fair Dealing Guidelines”, as they are stated in Appendix A, into their board policies.

Additional Users’ Rights Applicable to Education

In addition to fair dealing, the Copyright Act contains additional users’ rights that allow the use of copyright-protected works for educational purposes without obtaining permission and without paying a fee to the copyright owner or copyright collective. The following are examples of additional users’ rights applicable to education:

- an Internet provision that allows students and educators to use publicly available Internet materials for their learning and educational pursuits
- the ability to show audio-visual works (such as movies on DVD or video) for educational purposes
- the use of digital displays such as interactive whiteboards and digital projectors to show copyright-protected works in classrooms, provided that the works are used for the purpose of education and are not commercially available in a medium that is appropriate for this purpose

Appendix B to this memorandum provides a summary of the additional users’ rights applicable to education.

Uses outside Permitted Provisions

To use a copyright-protected work that falls outside the provisions outlined in Appendix A and Appendix B, prior written permission must be obtained from the copyright owner or copyright collective, and *a transaction fee paid for the use, if required*. If this process has not been followed, the risk to boards is that the use is contrary to law, and to proceed with the planned use is copyright infringement.

In the event that a school board is required to pay damages and/or legal fees as a result of copyright infringement, such expenses will be the responsibility of the board.

COMPLIANCE STRATEGIES FOR BOARDS

To ensure that all board employees understand and comply with copyright law, boards are encouraged to develop strategies and procedures such as the following:

- Boards should ensure that their copyright policies are regularly communicated to all employees and form part of the orientation of new employees.

- Boards should post their copyright policies at all board and school photocopying and printing stations and near other devices used to reproduce and communicate material in electronic form, such as scanners.
- Boards should obtain the “Fair Dealing Guidelines”, available on CMEC’s website, at www.cmec.ca. The guidelines are a valuable reference tool for educators and can be posted near all computer and work stations.
- To assist employees in determining whether the use of a copyright-protected work falls within the permitted provisions for users’ rights applicable to education as outlined in Appendix A and Appendix B, boards are encouraged to recommend that employees consult the information booklet *Copyright Matters!*, published by the Council of Ministers of Education, Canada (CMEC). Booklets have been sent to school board offices for distribution. Each educator should receive a copy of the booklet. The bilingual booklet is available on CMEC’s website, at www.cmec.ca.
- School boards should develop a process that clearly defines the steps required for employees to use copyright-protected works that fall outside the provisions in Appendices A and B.
- Boards may designate one or more persons to provide guidance to employees about whether a use falls within or outside the provisions in Appendices A and B and whether permission is required. The same person(s) could also provide advice about obtaining prior written permission and about paying a transaction fee (if required).

APPENDIX A: FAIR DEALING GUIDELINES

Note: The following text has been prepared by the Copyright Consortium of the Council of Ministers of Education, Canada (CMEC) for use by non-profit elementary, secondary, and postsecondary educational institutions across Canada. The “Fair Dealing Guidelines” below are also available on CMEC’s website, at www.cmec.ca.

The fair dealing provision in the Copyright Act permits use of a copyright-protected work without permission from the copyright owner or the payment of copyright royalties. To qualify for fair dealing, two tests must be passed.

First, 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.

The second test is that 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 and post-secondary educational institutions.

These guidelines apply fair dealing in non-profit K–12 schools and postsecondary educational institutions and provide reasonable safeguards for the owners of copyright-protected works in accordance with the Copyright Act and the Supreme Court decisions.

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 these Fair Dealing Guidelines 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 postsecondary educational institution;
 - c. as part of a course pack.

4. A short excerpt means:
 - a. up to 10 per cent 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 in these Fair Dealing Guidelines may be referred to a supervisor or other person designated by the educational institution 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 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.

APPENDIX B: ADDITIONAL USERS' RIGHTS APPLICABLE TO EDUCATION

This appendix is based on information contained in *Copyright Matters!*, a booklet developed by the Council of Ministers of Education, Canada (CMEC). Please refer to the booklet, available at www.cmec.ca, for more detailed information on copyright law and the conditions of and limits on the use of copyright-protected materials.

In addition to the “Fair Dealing Guidelines” outlined in Appendix A of this memorandum, the following is a summary of additional users’ rights in the Copyright Act that are available to educational users. The uses of copyright-protected works that fall within these users’ rights do not require payment to and permission of the copyright owner, except where specified in the *Copyright Matters!* booklet.

1. Reproduction of a work to be displayed for the purpose of instruction

Educators may reproduce, in paper or electronic form, a work protected by copyright in order to display the work on interactive whiteboards and digital projectors for the purpose of instruction, provided that the work is not commercially available in an appropriate medium for display.

2. Tests and examinations

Educators may copy, translate, communicate electronically, show, or play a copyright-protected work for a test or examination, provided that the work is not commercially available in an appropriate medium for the purpose of a test or examination.

3. Use of statutes, regulations, and court decisions

Educators and students may copy and communicate the text of federal, provincial, and territorial statutes, regulations, and judicial decisions for educational purposes from every province and territory except Manitoba, Quebec, and Nunavut.

4. Reproduction in alternative formats for persons with perceptual disabilities

Students, and educational institutions on behalf of students, may make a copy of a literary, dramatic, musical, or artistic work (excluding audio-visual works) in an alternative format designed for a person with a perceptual disability, for the benefit of a student. Persons with perceptual disabilities include the blind and visually impaired and persons with learning and other physical disabilities. The work must not be commercially available in the alternative format. Educational institutions are prohibited from making a large-print book for a student with a perceptual disability without written permission from the copyright owner.

5. School libraries

School libraries may use digital technologies such as e-mail to deliver a copyright-protected work as part of an interlibrary loan, provided that measures are taken to protect against further distribution of the material.

6. Playing sound recordings, listening to the radio, and watching television programs (excluding music)

Educators may play sound recordings, listen to the radio, and watch television programs as they are being transmitted (via over-the-air broadcast, cable, satellite, or the Internet) in the classroom provided that the use is for educational purposes. This user's right does not apply to previously recorded radio and television programs.

7. Performing plays and other works on school premises

Students may perform a work protected by copyright, such as a play. An example is the performance of a play in a drama class. However, the performance of the play must meet the following conditions:

- It must take place on school premises.
- It must be for educational purposes.
- It must be not-for-profit (any fee charged by the school for attending the performance of the work must only recover the costs associated with the performance, including overhead costs).
- It must take place before an audience consisting primarily of students of the school, persons acting under the authority of the school, or any person who is directly responsible for developing or implementing a curriculum for the school.

8. Performing music in schools for educational purposes

The public performance of music in elementary and secondary schools, whether recorded or live, is permitted if the performance is for educational purposes. Schools may also play sound recordings containing a musical work, listen to the radio, and watch television programs containing a musical work while the program is being transmitted (via over-the-air broadcast, cable, satellite, or the Internet).

However, the use of music must meet the following conditions:

- It must take place on school premises.
- It must be for educational purposes.
- It must be not-for-profit (any fee charged by the school for attending the performance of the work must only recover the costs associated with the performance, including overhead costs).
- It must take place before an audience consisting primarily of students of the school, persons acting under the authority of the school, or any person who is directly responsible for developing or implementing a curriculum for the school.

Performances or other uses of music that are not for educational purposes, such as performances at school dances and sporting events, must be authorized by the copyright owner, or by a copyright collective that represents the owner. (Please refer to the *Copyright Matters!* booklet for additional information about what activities require permission and the payment of royalties.)

9. Use of copyright-protected works to create new works

Anyone, including students and educators, may use copyright-protected works to create new works provided that the following conditions are met:

- The new work may only be used for non-commercial purposes.
- The original source must be mentioned.
- The original work used to generate the content must have been legally acquired.
- The resulting user-generated content must not substantially harm the market for the original work.

10. News and news commentary programs from radio or television

Educators, or a person acting under the authority of a school, may make a single copy of a news or news commentary for later viewing by students, provided that the copy is only made at the time the program is aired by the broadcaster or communicated over the Internet.

11. Showing of audio-visual works on school premises

Educators may show audio-visual works on school premises for educational purposes, such as movies on DVD or video, provided that the copy is not one that infringes copyright law. Copies can be purchased or rented from a retail store or borrowed from a library or from a friend.

12. Online learning

Educators and schools may transmit lessons that contain copyright-protected materials to students in real time (synchronous learning) over the Internet, or record a lesson that contains such material and make it available online (asynchronous learning). Students are permitted to make a copy of the lesson for their personal use. However, both students and schools are required to destroy recordings and copies within 30 days after the students enrolled in the course receive their final evaluations (final report cards) for the course.

13. Educational use of the Internet

The “educational use of the Internet” provision allows students and educators to use publicly available Internet material for their learning and educational pursuits. Publicly available materials are those legitimately posted online by content creators and copyright owners without any technological protection measures, such as a password, encryption systems, or similar technology intended to limit access or distribution, and without a clearly visible notice prohibiting educational use. The provision requires that the source be mentioned.