



EDUCATIONAL USE OF COPYRIGHT-PROTECTED WORK POLICY

DM Approval:

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Effective Date: January 1, 2013

GENERAL INFORMATION

The 'fair dealing' provision of the *Copyright Act* permits the use of a copyright-protected work without permission from a copyright owner and without the payment of copyright royalties.

In 2012 there were two significant events that affected the educational use of copyright-protected works - the adoption by Parliament of the *Copyright Modernization Act* and a decision by the Supreme Court of Canada on the meaning of 'fair dealing' in an education setting (the '*Education Fair Dealing Case*').

As a result of these two events, many educational uses of copyright-protected works no longer require permission or payment of copyright royalties. The Council of Ministers of Education, Canada (CMEC) Copyright Consortium therefore developed a set of guidelines on how member jurisdictions can avail themselves of these new copyright rules.

PURPOSE

This policy provides direction to Yukon Education staff on 'fair dealing' in non-profit K-12 schools and educational institutions, and provides reasonable safeguards for the owners of copyright-protected works in accordance with the *Copyright Act* and legal precedents.

DEFINITIONS

'Copyright-Protected Work' means a work for which the copyright owner has the sole and exclusive right to reproduce the work either wholly or substantially.

'Fair Dealing' is a user's right in copyright law that permits use of a copyright-protected work without permission or payment of copyright royalties. To qualify as 'fair dealing', two tests must be met:

1. The use of the copyright-protected work 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 this test.
2. The dealing must be 'fair'. In the educational context it is 'fair' for an educator to copy a 'short excerpt' from a copyright-protected work for students in a class.

'Short Excerpt' means:

1. up to 10% of a copyright-protected work (including a literary work, musical score, sound recording, and an audiovisual work);
2. one chapter from a book;
3. a single article from a periodical;
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;
5. an entire newspaper article or page;
6. an entire single poem or musical score from a copyright-protected work containing other poems or musical scores; or
7. an entire entry from an encyclopedia, annotated bibliography, dictionary or similar reference work.

POLICY STATEMENT

A. Use of Copyright-Protected Work Without Permission or Payment of Royalties

Educators in non-profit educational institutions may communicate and reproduce, in paper or electronic form, short excerpts from a copy-right protected work for the purposes of research, private study, criticism, review, news reporting, education, satire and parody.

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:

1. as a class handout;
2. as a posting to a learning or course management system that is password protected or otherwise restricted to students of a school; or

3. as part of a course pack.

Copying or communicating short excerpts from a copyright-protected work under this 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.

B. Use of Copyright-Protected Work – Permission and Payment of Royalties Required

When an educator copies or communicates multiple short excerpts from the same copyright-protected work, with the intention of copying or communicating substantially the entire work, permission and payment of royalties is required.

C. Process for Determining Whether Permission and Payment of Royalties is Required

When an educator is uncertain about whether copying or communicating a copyright-protected work requires permission and the payment of royalties the question may be referred to the Policy Planning and Evaluation Branch of Yukon Education who will evaluate, in accordance with the criteria set out in this policy, whether the proposed copying or communicating is permitted as 'fair dealing'.

ROLES AND RESPONSIBILITIES

Yukon education employees are responsible for ensuring that, when copying or communicating copyright-protected material in schools, the provisions of this policy are followed.

APPLICATION

This policy applies to all Yukon Education employees.

EXCEPTIONAL CIRCUMSTANCES

In situations where the individual circumstances of a case are such that the provisions of this policy cannot be applied or to do so would result in an unfair or an unintended result, the decision may be based on the individual merits and justice of the situation. Such a decision will be considered for that specific case only and will not be precedent setting.

EFFECTIVE DATE

This policy is effective January 1, 2013.

LEGISLATIVE AND POLICY REFERENCES

Education Act, ss. 5 (b), ss. 6 (1) (h), and ss. 186 (1) (n).
Copyright Act (Canada)

HISTORY

Educational Use Of Copyright-Protected Work Policy, effective January 1, 2013.