

Fair Dealing Guidelines

University of Saskatchewan

These Fair Dealing Guidelines (the “Guidelines”) are intended to assist members of the University of Saskatchewan (USask) community with decision-making in situations when fair dealing needs to be considered. In addition to the fair dealing exception, the *Copyright Act* contains [other exceptions](#) that could apply in the educational context. Members of the university are encouraged to [contact the Copyright Office](#) for assistance in applying the Guidelines or questions about other educational exceptions that may apply.

The “fair dealing” exception in sections 29, 29.1, and 29.2 of the [Canadian Copyright Act](#) (the Act) is a statutory user’s right permitting use of, or “dealing” with, a copyrighted work for certain purposes without permission from the copyright owner or the payment of royalties.

As outlined by the Supreme Court of Canada in [CCH Canadian Limited v. Law Society of Upper Canada](#), the “fair dealing exception is always available” to users, provided the legal requirements are met. The fair dealing exception is context-specific and assessed on the facts of each case. The concept of fair dealing has evolved through case law, including in Supreme Court of Canada rulings in [CCH Canadian Limited v. Law Society of Upper Canada](#), [Alberta \(Education\) v. Canadian Copyright Licensing Agency \(Access Copyright\)](#), [Society of Composers, Authors and Music Publishers of Canada v. Bell Canada](#), and [York University v. Canadian Copyright Licensing Agency \(Access Copyright\)](#).

To qualify for fair dealing, two tests must be met:

1. The purpose of the dealing, or use of the work, must be for one of the **allowable purposes** listed in the *Copyright Act*:
 - a. Research
 - b. Private study
 - c. Education
 - d. Parody
 - e. Satire
 - f. Criticism
 - g. Review
 - h. News reporting

If this first test is met, the person can continue to the second test of the analysis.

2. The dealing must be “**fair**”. The Supreme Court of Canada identified the following six factors courts will consider when assessing whether the use of a work is likely to be fair:
 - a. The **purpose** of the dealing
 - What is the user’s real purpose or motive in using the work?
 - Is it commercial or non-commercial (e.g., research, educational, charitable)?
 - b. The **character** of the proposed dealing
 - What will be done with the work?

- Will the work be widely distributed, or will distribution be limited?
- Will there be an isolated use or an ongoing repetitive use of the work?
- Will the copy be destroyed after it is used for its specific intended purpose?
- c. The **amount** of the dealing
 - How much of the work was copied?
 - What is the importance of the excerpt copied in relation to the whole work?
- d. **Alternatives** to the dealing
 - Is there a non-copyrighted equivalent available that could be used to achieve the purpose?
 - Is the work necessary for the end result?
- e. The **nature** of the work
 - Is the work published or unpublished?
 - Is the work confidential?
- f. The **effect** of the dealing on the work
 - Will the reproduced work compete with the market of the original work?

The above factors should be considered from the perspective of the end-user of the material. For example, while it is the instructor who may copy and distribute material for a class, the end-users are the individual students in that class. Therefore, the student's purpose for using the material should be considered when completing the fair dealing analysis.

Principles

The following principles must be followed when copying or before distributing a work based on the fair dealing exceptions in the Act:

1. The work used, whether in whole or in part, must have been legally obtained.
2. Any restrictions included in license agreements (e.g., library license contracts) supersede the Fair Dealing allowances below. Please check the license information for electronic library resources before distributing copies of the material.
3. Technological protection measures (e.g., digital locks) cannot be circumvented in order to copy or distribute a work, even when the amount falls within the Fair Dealing allowances.
4. No more of the work should be copied than is required to achieve the purpose of the copying.
5. "Copying or communicating multiple short excerpts from the same copyright protected work (cumulative copying), with the intention of copying or communicating more than a fair amount, is prohibited" (Copyright Office, n.d.).

Fair Dealing for Educators

Subject to the above principles, educators may copy – in paper or electronic form – Short Excerpts (defined below) from copyright-protected works for the purposes of research, private study, criticism, review, news reporting, parody, satire, or education in accordance with these Guidelines. Acquiring permission from a copyright holder, or using an alternative work, may be required where the copying and/or distribution falls outside of these Guidelines.

A single copy of a Short Excerpt from a work may be provided to each student registered or engaged in a course, unit or program of study administered by USask, including a person who is granted deferred standing in a course:

- a. in a learning management system or library e-reserve that is password-protected or otherwise restricted to, and accessible only by, students in the specific course or program requiring the materials;
- b. in an email message (e.g., as an attached file) that is only sent to, and accessible only by, students in the specific course or program requiring the materials. The email must include a statement that any further use of the material must comply with applicable licensing agreements and copyright laws;
- c. as a class handout; or
- d. as part of a course package.

A “Short Excerpt” includes 10% or less of a whole work, OR no more than:

- a. one chapter from a book;
- b. a single article from a journal issue;
- c. an entire artistic work (e.g., a painting, print, photograph, diagram, drawing, map, chart) from a copyright-protected work containing other artistic works;
- d. an entire newspaper article or page;
- e. an entire entry from an encyclopedia, annotated bibliography, dictionary or similar reference work; or
- f. a single excerpt from an anthology or collection (e.g., a poem, short story, musical work, play), unless the excerpt is commercially available as a stand-alone work.

“When considering copying or communicating a short excerpt, you can choose the most advantageous of the [options listed] above” (Copyright Office, n.d.). For example, if a copy request is for one chapter of a book, the total pages copied may exceed 10% of the book. If a copy request is for 60 pages out of a 1,000-page book (6%), that 60 pages could be made up of multiple chapters of that book.

Copies of Short Excerpts made 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. Including citation information for any material distributed in accordance with these Guidelines is strongly recommended, and will often be required to ensure academic integrity.

Any fee charged by USask for copied materials (e.g., in a course package) must not exceed the costs, including overhead costs, of the making of the copy.

The circumstances that qualify within the fair dealing section of the Act may vary from case to case. If you have a request for copying that you believe may be covered by fair dealing but is not explicitly permitted by these Guidelines, please contact the [Copyright Coordinator](#).

Fair Dealing for Students

Students of USask are responsible for complying with license agreements and copyright laws in their use of copyright-protected materials. Subject to the above principles, students may create a copy of a Short Excerpt for their own education, research or private study as necessary to complete a USask course or program. Acquiring permission from a copyright holder, or using an alternative work, may be required where the copying and/or distribution falls outside of these Guidelines.

A “Short Excerpt” includes 10% or less of a whole work, OR no more than:

- a. one chapter from a book;
- b. a single article from a journal issue;
- c. an entire artistic work (e.g., a painting, print, photograph, diagram, drawing, map, chart) from a copyright-protected work containing other artistic works;
- d. an entire newspaper article or page;
- e. an entire entry from an encyclopedia, annotated bibliography, dictionary or similar reference work; or
- f. a single excerpt from an anthology or collection (e.g., a poem, short story, musical work, play), unless the excerpt is commercially available as a stand-alone work.

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Fair Dealing for Researchers

Researchers of USask are responsible for complying with license agreements and copyright laws in their use of copyright-protected materials. Subject to the above principles, researchers may create a copy of a Short Excerpt for the purpose of research and the Short Excerpt may be distributed to USask research colleagues – be they faculty, staff or students – if that distribution is required in order to fulfill the research purpose. Acquiring permission from a copyright holder, or using an alternative work, may be required where the copying and/or distribution falls outside of these Guidelines.

A “Short Excerpt” includes 10% or less of a whole work, OR no more than:

- a. one chapter from a book;
- b. a single article from a journal issue;
- c. an entire artistic work (e.g., a painting, print, photograph, diagram, drawing, map, chart) from a copyright-protected work containing other artistic works;
- d. an entire newspaper article or page;
- e. an entire entry from an encyclopedia, annotated bibliography, dictionary or similar reference work; or
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These Fair Dealing Guidelines are based in part on recommended fair dealing guidelines for teaching materials created by [Universities Canada](#) and were initially adopted by the University of Saskatchewan (USask) in November 2012. The guidelines have been updated by the USask Copyright Office, in collaboration with the Copyright Management Committee, and are effective as of May 1, 2024.

References

Copyright Office (n.d.). Fair dealing and other copyright exceptions. University of Manitoba. Retrieved October 2, 2023 from <https://umanitoba.ca/copyright/guidelines/exceptions>.