

Copyright and Arts Education*

School leaders and arts educators are responsible to comply with copyright legislation and follow guidelines that outline the rights and responsibilities of users of copyright-protected works. According to *The Manitoba Teachers' Society Handbook*,

Members have the right to draw on a wide variety of resources in promoting and facilitating student learning while safeguarding the legitimate interests of the creators of the artistic and intellectual works used by ensuring copyright laws are adhered to. (The Manitoba Teachers' Society, Section 4.9(b), 130)

Every school division and funded independent school in Manitoba is required to

- comply with the education and fair dealing exceptions identified in the Government of Canada's *Copyright Act*
- use the six factors outlined by the Supreme Court of Canada to assess whether a dealing is fair (see page 44)
- follow the fair dealing guidelines developed by the Council of Ministers of Education, Canada (CMEC) to assist schools in determining fair use of copyrighted materials (Noel and Snel, *Copyright Matters! 2-3*)
- have a policy in place to adhere to the fair dealing guidelines

Copyright in Canada

The Canadian *Copyright Act* (C-42) and subsequent Canadian court decisions pertaining to the Act regulate the use and reproduction of artistic and intellectual works. Canadian copyright legislation protects original, fixed (published or unpublished) literary, dance/choreographic, dramatic/theatrical, musical, and visual arts works, recordings, performances, and communication signals from being reproduced, performed, or distributed without the permission of the copyright holder.

Fair Dealing

The **fair dealing** exception in the *Copyright Act* outlines the **user's rights** for copying and use (called "dealing") of copyright-protected work under certain conditions considered "fair" and for allowable purposes, such as education. Under the fair dealing exception, users may, for allowable purposes and when considered fair, use, produce, and reproduce copyright-protected work without seeking permission or needing to pay licence fees or copyright royalties to the original author or creator of the work.

* The information included in this section is relevant for Kindergarten to Grade 8 and Grades 9 to 12 arts education.

Fair dealing is intended to provide reasonable instances in which copyright is not considered to be infringed, while at the same time ensuring that creators, including students, have the legal right to protect and control their creations.

Factors for Determining Fair Dealing

Guidelines for determining fair dealing are not included in the Canadian *Copyright Act*, but have emerged from Supreme Court of Canada rulings. The Supreme Court of Canada states that educational institutions are exempted from copyright infringement under certain circumstances. The Court outlines six factors to be considered in assessing whether a dealing is fair:

the purpose of the dealing, the character of the dealing, the amount of the dealing, the nature of the work, available alternatives to the dealing, and the effect of the dealing on the work. (CCH Canadian Ltd. v. Law Society of Upper Canada 342)

The six factors for determining fair dealing are explained with examples below.

Factors for Determining Fair Dealing	
Factors	Explanation
1. the purpose of the dealing	the purposes allowable under the <i>Copyright Act</i> for use of the work (e.g., education)
2. the character of the dealing	the way in which the work is used (e.g., whether single or multiple copies are distributed, whether the copies are destroyed after use)
3. the amount of the dealing	the quantity and proportion of the work taken
4. the nature of the work	the public availability of the work (e.g., whether unpublished work is important for wider knowledge, whether unpublished work is intended to be confidential)
5. available alternatives to the dealing	the availability of non-copyrighted equivalents of the work
6. the effect of the dealing on the work	the effect of copying on the market of the work (e.g., whether copies compete with the commercial market)

CMEC Fair Dealing Guidelines

CMEC provides various educational resources that elaborate the factors for determining fair use of copyrighted materials and provide examples of what kinds of educational activities are permitted under fair dealing.

The resources available to educators on the CMEC website include the following:

- *Copyright Matters! Some Key Questions and Answers for Teachers* (Noel and Snel)
<https://www.cmec.ca/140/Programs-and-Initiatives/Copyright/Copyright-Matters-/index.html>
- *Fair Dealing Guidelines* (Poster and Information Sheet)
<https://www.cmec.ca/docs/copyright/FDG-BW-EN-2016.pdf>
- *Copyright Information for Teachers*
<https://www.cmec.ca/466/Programs-and-Initiatives/Copyright/Copyright-Information-for-Teachers/index.html>
- *Copyright Decision Tool*
<http://copyrightdecisiontool.ca/DecisionTool/>

The CMEC fair dealing guidelines outlined in *Copyright Matters!* explain

- who may communicate and reproduce copyright-protected work
- allowable purposes for and amounts of use
- conditions related to communication and reproduction
- prohibitions to copying

Copyright Matters! specifies amounts that can be copied and communicated once the dealing is determined to be fair according to the six factors established by the Supreme Court of Canada. Fair dealing, known as user's rights, allows copying of short excerpts, following certain conditions outlined in *Copyright Matters!*

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. (Noel and Snel 3)

Copyright Matters! notes that "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" (Noel and Snel 3).

* Source: Noel, Wanda, and Jordan Snel. *Copyright Matters! Some Key Questions and Answers for Teachers*. 4th ed. Toronto, ON: Council of Ministers of Education, Canada, Canadian School Boards Association, and Canadian Teachers' Federation, 2016. 3.

Commonly Asked Questions about Fair Dealing

Copyright Matters! provides important information for arts educators about the fair use of copyright-protected materials by addressing commonly asked questions such as the following:

Can teachers

- copy or post an entire musical score?
- copy materials for display as part of instruction (e.g., whiteboard, overhead projector, computer screen)?
- copy materials for one-time use?
- copy, translate, communicate electronically, show, or play copyright-protected work for tests and examinations?
- play a sound recording or turn on a radio for students to listen to, or turn on a television for students to watch?
- allow students to perform a copyright-protected work, such as a play, on school premises?
- allow music (recorded or live) to be communicated or performed without the copyright owner's permission?
- use or allow students to use copyright-protected works to create new works?
- copy programs from radio or television?
- show an audiovisual work on school premises?
- copy an audiovisual work at home and show it in the classroom?
- live-stream or record lessons to make available online for students on demand?
- copy computer software for educational use?
- copy or allow students to copy from the Internet?
- break digital locks or allow students to break digital locks to use copyright-protected materials?

It is important for administrators and educators to refer to *Copyright Matters!* for responses to these and other questions about fair dealing in school.

Backup Copies

A person who owns or has a licence to use a copy of a work is allowed to make backup copies of the work (e.g., print, audio, visual, or digital work) in the event that the original legally obtained source has been lost or damaged (*Copyright Act*, Section 29.24). However, backup copies may not be given away.

The backup copies exception does not apply to works protected by digital locks or licence agreements. **Digital lock prohibitions and licence agreements supersede fair dealing and education exceptions.**

Copyright and Public Domain

Works in the public domain are not covered by copyright legislation or fair dealing guidelines and may be freely copied, distributed, adapted, and performed without permissions or royalty payments. Under the Canadian *Copyright Act*, the term of copyright is limited to the life of the creator or author plus 50 years. After that time, the copyright term expires and the work becomes a part of the public domain.

Copyright Protections for Students and Teachers

When students, teachers, and others create original artistic works, copyright is automatic and inherent. There is no need to apply for copyright protection or attach the international copyright symbol © to have artistic work protected by Canadian copyright legislation. Ideas, however, cannot be copyrighted. The original artistic work must be in a fixed form (e.g., musical score or recording, dance choreography, drawing, photograph, painting, sculpture, print text, digital recording).

A student's original artwork in any form (e.g., print text, video or sound recording, artifact, website) is protected from use by teachers or the school: "The student—or if the student is a minor, the student's parent or legal guardian—must authorize the further use of a student's work, such as its use in a school publication, a teaching workshop, a student exemplar, or in a Web posting" (*Copyright Matters!* 20).

All fixed, original work is inherently protected by copyright legislation. However, copyright protection may not be understood by all users; some users may mistakenly assume that copying an artistic work that does not have a copyright symbol © or bibliographic information does not constitute a copyright infringement. It is recommended that students and educators mark their work with the copyright symbol © and include the name of the creator and the date the work was created.

For added protection, original work may be registered for copyright by completing an application form and paying a fee to the Canadian Intellectual Property Office.

Copyright Responsibilities of School Leaders and Educators

Works and materials that are protected by the Canadian *Copyright Act* and fall outside the fair dealing guidelines may not be used in any form until appropriate permissions are obtained and/or fees or royalties paid.

If copyrighted works or materials fall outside the fair dealing guidelines, permissions are required for using the works, and school leaders and teachers are responsible for obtaining copyright permissions if required. If copyright infringement occurs, the teacher, school, and school board can be held responsible for damages by the copyright owner(s).

Any fixed, original or mash-up work that students create (e.g., music composition or creation, artwork, drama work, dance work, or multimedia work in original, recorded, or digitally posted form) is protected by the Canadian *Copyright Act*. If the students are minors, written consent must be obtained from them and their parents/legal guardians for any use of their work (e.g., for use in school or commercial publications; in educational resources; at professional development workshops, presentations, or conferences; on websites; on posters or advertisements of school events; or for any other educational uses). Consent forms should be written so that permissions are specific to the particular works being used.

It is the responsibility of school leaders to ensure appropriate decision-making when it is not clear whether copyrighted materials fall under fair dealing guidelines or education exceptions. School leaders should follow school division copyright policy and use the criteria (the six factors for determining fair dealing identified on page 44) established by the Supreme Court of Canada rulings to determine the need for copyright permissions and/or payments. In cases of uncertainty, legal advice may be required.