

## Fair Dealing Policy

The legal counsel for the Association of Universities and Colleges of Canada has prepared, and recommends for adoption by each AUCC member outside Quebec, the attached fair dealing policy.

The fair dealing policy outlines the copying of published works that can be made in print or electronic format by a university through its staff and faculty members under the exception for fair dealing in sections 29 to 29.2 of the *Copyright Act*, without seeking permission of the copyright owner. The policy does not apply to audio or video recordings.

The fair dealing policy does not address exceptions in the *Copyright Act* other than fair dealing. Depending on the circumstances, other exceptions in the Act may also permit the copying of works without the permission of the copyright owner. One example of an exception is section 29.4(1). It provides that it is not an infringement of copyright for an educational institution to make a manual reproduction of a work onto a dry-erase board, flip chart or other similar surface intended for the display of handwritten material. Another example is section 30.2 which provides that it is not an infringement of copyright for a library to do anything on behalf of any patron that the patron could do herself under fair dealing. The fair dealing policy does not restrict any copying that your institution is permitted to do under arrangements that your institution has with publishers, e.g., under a Canadian Research Knowledge Network licence, or a transactional permission with the publisher or the publisher's representative, e.g., Access Copyright or the Copyright Clearance Centre.

The fair dealing policy does not permit making copies for sale to students in course packs, making copies of required readings for library reserve, or posting copies on course management systems, e.g., Blackboard, or on course websites.

Some licence agreements that universities have with publishers that provide access to publications in electronic format restrict the making or dissemination of copies. Where there is a conflict between the terms of a licence agreement and the fair dealing policy, the terms of the licence agreement apply.

For assistance in making decisions on whether copying outside the scope of the copying guidelines are for one of the fair dealing purposes of research, private study, review or criticism, and in all the circumstances, whether the making of the copies is fair, contact Heather Martin, ext. 54701, or send an e-mail to [fairdealing@uoguelph.ca](mailto:fairdealing@uoguelph.ca). Paragraph 10 of the policy sets out the factors to be considered in determining whether the making of a copy for one of the fair dealing purposes is fair. If the copying is for one of such purposes and the making of the copy is fair, the copying can be made under the fair dealing exception without the permission of the copyright owner.

## I. Copying Guidelines

1. Except where otherwise stated, these guidelines apply to a university making a single copy from a work protected by copyright for the purposes of research, private study, review or criticism in circumstances in which the consent of the owner of copyright has not been secured and is not required by reason of the fair dealing exception in the *Copyright Act*. Permission from a copyright holder may be required where the copy falls outside of these guidelines.
2. Single copies that are permitted to be made pursuant to this policy must be made only from publications in which copyright subsists, such as, books, journals and other periodical publications, newspapers and magazines ("Published Works"). A copy may only be made from a lawful copy of the work in the possession of the university, and if the lawful copy is in electronic form, there is no restriction against making a copy under the contractual terms relating to the Published Work.
3. No copying may exceed 10 per cent of a Published Work, other than a textbook produced primarily for the post secondary education market, or the following, whichever is greater:
  - (a) an entire chapter from a book provided that it does not exceed 20 per cent of the book;
  - (b) an entire article from a periodical publication;
  - (c) an entire short story, play, poem or essay from a book or periodical publication;
  - (d) an entire entry from an encyclopedia, dictionary, annotated bibliography or similar reference book;
  - (e) an entire reproduction of an artistic work from a book or periodical publication; and
  - (f) a single musical score from a book or periodical publication.
4. No copying may exceed 5 per cent of a textbook produced primarily for the post secondary education market, or the following, whichever is greater:
  - (a) an entire chapter from a textbook provided that it does not exceed 10 per cent of the textbook;
  - (b) an entire short story, play, poem or essay from the textbook provided that it does not exceed 10 per cent of the textbook; and
  - (c) an entire reproduction of an artistic work or a single musical score from the textbook provided that it does not exceed 10 per cent of the textbook.

5. Notwithstanding any of the other provisions of these guidelines, no copies may be made of the following:

- (a) any of the works referred to in paragraphs 3(b) to 3(f) of these guidelines where the publication containing the work does not contain other works. For example, no copy may be made of a play from a publication containing the play but no other work;
- (b) unpublished works, subject to the provisions of paragraph 10 below;
- (c) proprietary workbooks, work cards, assignment sheets, tests and examination papers;
- (d) instruction manuals;
- (e) newsletters with restricted circulation intended to be restricted to a fee paying clientele; or
- (f) business cases which are made available for purchase.

6. Each paper copy made pursuant to these guidelines shall contain, on at least one page, the name of the author or artist (where known), the title of the publication from which the copy was made, the name of the publisher of that publication and the following statement:

This copy is made solely for the use by a student, staff member or faculty member for research, private study, review or criticism. Any other use may be an infringement of copyright if done without securing the permission of the copyright owner.

7. Each electronic copy made pursuant to these guideline shall have the information and statement referred to in paragraph 6 on at least one page, except for an electronic copy made available from a server pursuant to these guidelines, that information and statement could instead be associated with the copy such that notice of that information and statement would come to the attention of the person who accesses the copy.

8. If a fee is charged for making a copy the fee is set no more than an amount representing a reasonable approximation of the actual cost of making and delivering the copy.

9. University staff shall use reasonable efforts to guard against systematic, cumulative copying from the same work which in total exceeds the portion of the work that may be copied pursuant to these guidelines and to ensure that the number of copies made complies with this policy. If university staff suspects that a student, other staff member or faculty member is engaged in systematic, cumulative copying, the matter must be referred to Michael Ridley, Chief Information Officer and Chief Librarian, [mridley@uoguelph.ca](mailto:mridley@uoguelph.ca), ext. 52181, and any further requests from that student, staff member or faculty member for a copy may be refused.

10. Requests for the making of copies which fall outside these copying guidelines and requests for making of copies of unpublished works may be referred to Heather Martin, ext. 54701, or [fairdealing@uoguelph.ca](mailto:fairdealing@uoguelph.ca) for evaluation. A determination will be made as to whether the proposed copies are permissible in all circumstances relating to the requests and may ultimately be refused. The evaluation will examine all relevant

circumstances, including:

- (a) the purpose of the proposed copying, including whether it is for research, private study, review or criticism;
- (b) the character of the proposed copying, including whether it involves single or multiple copies, and whether the copy is destroyed after it is used for its specific intended purpose;
- (c) the amount or proportion of the work which is proposed to be copied and the importance of that work;
- (d) alternatives to copying the work, including whether there is a non-copyrighted equivalent available;
- (e) the effect of the copying on the work, including whether the copy will compete with the nature of the work, including whether it is published or unpublished; and
- (f) the commercial market of the original work.