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Fair Dealing Policy

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Responsible Executive:

Provost and Vice-President (Academic)

Enquiries:

[University Secretariat](#)

DISCLAIMER: If there is a Discrepancy between this electronic policy and the written copy held by the policy owner, the written copy prevails

Background

The legal counsel for the Association of Universities and Colleges of Canada has prepared, and recommends for adoption by each AUCC member outside Quebec that intends to operate under the Access Copyright Post-secondary Educational Institution Tariff, 2011 to 2015, the attached fair dealing policy.

The fair dealing policy outlines the copying of copyright protected 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 29.3 of the *Copyright Act*, without seeking permission of the copyright owner. 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 or a person acting under its authority for the purposes of education or training on its premises to reproduce a work, or do any other necessary act, in order to display it. 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 our institution is permitted to do under arrangements that we have 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. 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 decisions on whether copying outside the scope of the copying guidelines are for one of the fair dealing purposes of research, private study, review, criticism or news reporting, and in all the circumstances, whether the making of the copies is fair, the institution has appointed the below position.

Contact: Copyright Officer, MILO Office
Email: copyright@mcmaster.ca

Fair Dealing Policy

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 or 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 educational institutions.

This Fair Dealing Policy applies fair dealing in non-profit universities and provides 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 universities 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 or parody.
2. Copying or communicating short excerpts from a copyright-protected work under this Fair Dealing Policy for the purpose of news reporting, criticism or review must mention the source and, if given in the source, the name of the author or creator of the work.
3. A 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 the university

(c) as part of a course pack

4. A short excerpt means:

(a) up to 10% 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

provided that in each case, no more of the work is copied than is required in order to achieve the allowable purpose.

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 this Fair Dealing Policy may be referred to a supervisor or other person designated by the university 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 university for communicating or copying a short excerpt from a copyright-protected work must be intended to cover only the costs of the university, including overhead costs.

Appendices:

- Appendix #1 Application of the Fair Dealing Policy for Universities: General Application
- Appendix #2 Application of the Fair Dealing Policy for Universities to Teaching and Research by University Faculty
- Appendix #3 Fair Dealing Guidance for Students
- Appendix #4 Application of the Fair Dealing Policy for Universities to Library Copying
- Appendix #5 Application of the Fair Dealing Policy for Universities to Learning Management Systems
- Appendix #6 Application of the Fair Dealing Policy for Universities to the Production and Sale of Course Packs
- Appendix #7 Application of the Fair Dealing Policy for Universities to Administrative Copying
- Appendix #8 Application of the Fair Dealing Policy for Universities to Musical Works and Sound Recordings
- Appendix #9 Application of the Fair Dealing Policy for Universities to Audiovisual Works

Appendix #1

Application of the Fair Dealing Policy for Universities: General Application

The document provides general information about copyright, copyright infringement and the [Fair Dealing Policy for Universities](#) (“Fair Dealing Policy”) adopted by the university.

A. Copyright

Copyright subsists in every original literary, dramatic, musical and artistic work provided that certain conditions are met. These conditions include the citizenship or residence of the author of the work. Copyright also subsists in performers’ performances, sound recordings and broadcast signals. Very few original works do not attract copyright.

Copyright comprises a bundle of exclusive rights owned by the copyright holder. In a university setting, the most pertinent rights are the right to reproduce the copyright-protected work and the right to communicate the work to the public¹ by telecommunication. The latter right is important in relation to the transmission of digital copies of works by email or over the Internet. The communication right protects emailing copyright-protected work to students or posting a copyright-protected work to a learning management system that is accessible by students.

In general terms, with the exception of performers’ performances, sound recordings and broadcast signals, the term of copyright lasts for the life of the author and a period of 50 years from the end of the year in which the author died. For a sound recording and a broadcast signal the term is 50 years from the end of the year in which the recording was made or the signal was broadcast. For sound recordings published before that 50 year period expires, the term is extended to the end of the year 50 years after publication.

Once the term of copyright has expired a work becomes part of the public domain and the work can be used, e.g., reproduced or communicated, without permission.

B. Infringement of Copyright

It is an infringement of copyright to copy all or any substantial part of a copyright-protected work or to communicate all or any substantial part of a copyright-protected work to the public by telecommunication without the permission of the copyright holder, unless copying or communicating the work falls within one of the exemptions in the *Copyright Act*.

Substantial Part

The *Copyright Act* does not define “substantial part”. In determining what constitutes a substantial part the courts have focused on the quality of what was taken from the original work rather than the quantity that was taken. As a result, no quantitative percentage of a work can be

¹ In general, a communication is to the public, if the recipients are not restricted to individuals that are purely in a domestic relationship.

used to determine what constitutes a substantial part of a work. In general, reproducing a few sentences from a periodical article or book as a quotation is not a reproduction of a substantial part of the work. It is not an infringement of copyright if only an insubstantial part of a copyright-protected work is reproduced or communicated, e.g. in a thesis or periodical article.

C. Digital Licences

The university has entered into numerous licence agreements with publishers and aggregators pursuant to which it obtains access to published works in electronic form. The digital licences typically specify the uses that the university can make of the works to which access is provided. In some instances a copyright-protected work is made available to the university under a licence with a publisher or aggregator that prohibits certain uses of the work, e.g., prohibits the copying of the work for inclusion in a course pack. Any copying and/or distribution restrictions contained in a licence that permits access to a copyright-protected work will take precedence over the Fair Dealing Policy. Before using the Fair Dealing Policy to copy or communicate a short excerpt of a copyright-protected work that is subject to a digital licence, it is necessary to ensure that the use is not prohibited by the licence. You can obtain information about the restrictions imposed on copyright-protected works that are made available under digital licences at <http://mcmaster.scholarsportal.info/licenses/>.

D. The Fair Dealing Exemption

The fair dealing exemption in the *Copyright Act* provides that fair dealing with a copyright-protected work for one of the following eight purposes: research, private study, criticism, review, news reporting, education, satire, or parody, does not infringe copyright. Any fair dealing for the purpose of news reporting, criticism or review must however mention the source and, if given in the source, the name of the author or creator of the work.

To fall within the fair dealing exemption, a dealing, e.g., copying or communicating a work, must be for one of the eight purposes and also must be fair. The Supreme Court of Canada has considered the following factors in determining whether a dealing is fair:

1. the purpose of the proposed copying, including whether it is for research, private study, review, criticism or news reporting;
2. 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;
3. the amount or proportion of the work which is proposed to be copied and the importance of that work;
4. alternatives to copying the work, including whether there is a non-copyrighted equivalent available;
5. the nature of the work, including whether it is published or unpublished; and

6. the effect of the copying on the work, including whether the copy will compete with the commercial market of the original work.

This document and the related documents that discuss the Fair Dealing Policy provide guidance on how the fair dealing exemption would apply. These documents discuss the application of the exemption in particular contexts. They do not however address all of the circumstances in which the fair dealing exemption can be applied.

E. Other Exemptions

In addition to fair dealing, the *Copyright Act* includes a number of other exemptions from infringement of copyright. These include reproducing a work to display it in a classroom, reproducing a work in a test or examination, performing sound recordings or audiovisual works in a classroom, copying and communicating works made available through the Internet, time-shifting and reproducing a work for private purposes. A discussion of these additional exemptions and the conditions applicable to these exemptions is beyond the scope of this document except for the exemption for copying and communicating works made available through the Internet which is discussed below. For more information about the other exemptions contact McMaster's Copyright Officer at copyright@mcmaster.ca. With respect to audiovisual works you can find additional information in the document Application of the Fair Dealing Policy for Universities to Audiovisual works that can be found [here](#).

F. The Fair Dealing Policy

The university has adopted the Fair Dealing Policy to provide guidance to faculty members, instructors and staff members on when copying and communicating a copyright-protected work would fall within the fair dealing exemption. The policy permits faculty members, instructors, and staff members to copy and communicate, in paper or electronic form, short excerpts from copyright-protected works for any of the eight fair dealing purposes. The most important purposes for the university are research, private study and education.

Section 4 of the Fair Dealing Policy defines a short excerpt as follows:

4. A short excerpt means:
 - (a) up to 10% 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

provided that in each case, no more of the work is copied than is required in order to achieve the allowable purpose.

When considering copying or communicating a short excerpt under the Fair Dealing Policy, the most advantageous of sections 4(a) through (g) may be selected. For example, if one chapter of a book is more than 10% of the book, the one chapter may be copied under the Fair Dealing Policy. If more than one figure is selected for copying, the number of figures selected that may be copied under the Fair Dealing Policy cannot exceed 10% of the book. For example, if a book is 200 pages long, up to 20 pages may be copied under the Fair Dealing Policy.

The Fair Dealing Policy does not apply to students except to the extent that a student is an employee of the university, e.g. as a teaching assistant or instructor. The policy might however provide a general guidance on how the fair dealing exemption can be applied. For further information, students can refer to the document Fair Dealing Guidance for Students that can be found [here](#).

Depending on the circumstances, copying or communicating a copyright-protected work outside the Fair Dealing Policy may be permitted under the fair dealing exemption in the *Copyright Act*. To determine whether copying or communicating a work outside of the Fair Dealing Policy falls within the exemption contact McMaster's Copyright Officer at copyright@mcmaster.ca

G. Permission

If copying or communicating a copyright-protected work is outside the Fair Dealing Policy and does not fall within one of the exemptions in the *Copyright Act*, permission of the holder of copyright must be secured. Permission may be obtained directly from the holder of copyright or his or her representative. The Copyright Clearance Center, a U.S. non-profit organization, provides transactional permission in respect of a very large repertoire of copyright-protected works on behalf of copyright holders. McMaster's Copyright Officer can assist in obtaining the necessary permissions.

It is advisable to seek written permission to copy or communicate a copyright-protected work outside the Fair Dealing Policy and to retain a copy of the written permission in the event that copying or communicating the work is ever challenged.

H. Exemption for Works Available through the Internet

Section 30.04(1) of the *Copyright Act* provides an exemption from copyright infringement for copying, communicating and performing in public by an educational institution or a person

acting under the authority of one, e.g., a faculty member or administrative staff, for educational or training purposes of a copyright-protected work that is available through the Internet. The exemption is however subject to a number of conditions that must be met before the exemption applies. The conditions are as follows:

- I. The educational institution, or person acting under its authority mentions the source, e.g., through a URL, and if given the source, the name of the author, in the case of a work, the name of the performer, in the case of a performer's performance and the name of the record label in the case of a sound recording;
- II. The copyright-protected work or the Internet site where it is posted is not protected by a digital lock (also known as a technical protection measures or TPM) that either restricts access to the work or restricts copying, communicating or performing in public the work;
- III. There is no clearly visible notice other than a copyright symbol posted on the Internet site or on the work, prohibiting the act sought to be done; and
- IV. The educational institution or person acting under its authority did not know or should not have known that the work was made available through the Internet without the consent of the copyright holder.

Using the exemption under section 30.04(1) is preferable to copying or communicating a copyright-protected work under the Fair Dealing Policy because the entire work may be copied or communicated under section 30.04(1). A faculty member or administrative staff must however be satisfied that each of the conditions is met before using the exemption.

I. Digital Locks

Some copyright holders use digital locks to restrict access to copyright-protected works and/or to limit the use that can be made of such works. The *Copyright Act* now prohibits the circumvention of digital locks to obtain access to copyright-protected works. The Fair Dealing Policy does not permit the circumvention of digital locks to obtain access to copyright-protected works. In order to circumvent a digital lock it is necessary to obtain the permission of the copyright holder.

Appendix #2

Application of the Fair Dealing Policy for Universities to Teaching and Research by University Faculty

This document provides guidance on the application of the Fair Dealing Policy for Universities (“Fair Dealing Policy”) to copying and communicating of copyright-protected works by faculty members (including part-time and adjunct faculty) in the course of their teaching and research. It also applies to students employed by the university as teaching assistants or instructors and to postdoctoral fellows for copying and communicating copyright-protected works done during the course of their employment.

A. Copyright Infringement and Exemptions

It is an infringement of copyright to copy all or a substantial part² of a copyright-protected work or to communicate all or a substantial part of a copyright-protected work to the public³ by telecommunication without the consent of the holder of copyright, unless copying or communicating the work falls within one of the exemptions in the *Copyright Act*. Examples of a communication of a work to the public by telecommunication include emailing a work to more than one student and transmitting a work posted to a learning management system (“LMS”) to more than one student. The exemptions in the *Act* include exemptions for fair dealing, displaying a work for the purposes of education or training, and recording a lesson and communicating the recording to the public by telecommunication for educational or training purposes.

B. Fair Dealing

Copying and communicating works pursuant to the Fair Dealing Policy fall within the fair dealing exemption in the *Copyright Act* and therefore do not infringe copyright. There is no need to obtain the consent of the holder of copyright for those acts. The Fair Dealing Policy permits copying and communicating short excerpts of copyright-protected works by the university (including its faculty members) subject to certain safeguards to protect the interests of holders of copyright.

Definition of Short Excerpt

Section 4 of the Fair Dealing Policy defines a short excerpt as follows:

4. A short excerpt means:

² For a discussion of what constitutes a substantial part of a copyright-protected work and the ability to freely use an insubstantial part of a copyright-protected work see the Fair Dealing Policy for Universities: General Application to be found here http://www.copyright.mcmaster.ca/content/fair_dealing_policy

³ In general, a communication is to the public, if the recipients are not restricted to individuals that are purely in a domestic relationship, i.e. a family relationship.

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- (a) up to 10% 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

provided that in each case, no more of the work is copied than is required in order to achieve the allowable purpose.

Teaching

Under the Fair Dealing Policy a copy of a short excerpt of a copyright-protected work may be made by or on behalf of a faculty member for the purpose of teaching students. A faculty member or his or her proxy may:

- (i) provide a copy of the short excerpt to students enrolled in a course of study as a handout;
- (ii) email a copy of the short excerpt to students enrolled in a course of study;
- (iii) post a copy of the short excerpt on an LMS stored on a secure server or other device (e.g. password protected) that is only accessible by students enrolled in a course, unit or program of instruction;
- (iv) include a copy of the short excerpt in a course pack sold to students enrolled in a course of study;
- (v) include a copy of the short excerpt in a lecture or classroom presentation such as a PowerPoint presentation presented to students enrolled in a course of study; and

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- (vi) display a copy of the short excerpt in a classroom to students enrolled in a course of study.

In each case, a copy of the short excerpt may also be provided or made available as required to another faculty member and to university staff.

Additional information concerning the posting of a copy of a short excerpt of copyright-protected works to an LMS and including such a copy in a course pack are set out respectively in the document Application of the Fair Dealing Policy for Universities to Learning Management Systems to be found [here](#) and the document Application for the Fair Dealing Policy for Universities to the Production and Sale of Course Packs to be found [here](#). Special circumstances relating to the copying and performance of audiovisual works (e.g. YouTube videos) and musical works are set out respectively in the document Application of the Fair Dealing Policy for Universities to Audiovisual Works to be found [here](#) and the document Application of the Fair Dealing Policy for Universities to Musical Works to be found [here](#).

As a safeguard to protect the interests of holders of copyright, the work from which the copy of the short excerpt is made must be in the lawful possession of the university or a faculty member. This would include a work in the collection of the university library or a faculty member, a work borrowed by the university library or faculty member through an inter-library loan, or a short excerpt that is copied and communicated to the university or a faculty member under fair dealing.

The Fair Dealing Policy does not permit copying or communicating a copyright-protected work for a lecture or presentation that is open to the general public, i.e. a lecture or presentation that is not restricted to students specifically enrolled in a course of study. Depending on the circumstances the fair dealing exemption may however apply where the lecture or presentation is open to the public. For information about whether the exemption applies in particular circumstances contact McMaster's Copyright Officer at copyright@mcmaster.ca

Research

Under the Fair Dealing Policy a copy of a short excerpt of a copyright-protected work may be made for use by a faculty member in conducting research on a specific topic of enquiry or for inclusion in a personal collection of research resources. The faculty member may share a copy of the short excerpt with faculty and students both within the university and within another university with whom the faculty member is engaged in collaborative research. In sharing a copy of the short excerpt, the faculty member may email the copy to the students and other faculty member, or post the copy to a website on a secure server or other device (e.g. password protected), provided that the website is secured and is only accessible by those faculty members and students with whom the faculty member is conducting collaborative research.

Safeguard

As a safeguard to protect the interests of holders of copyright, the copying or communicating of multiple short excerpts from the same copyright-protected work for the purpose of teaching or

research with the intention of copying or communicating substantially the entire work is prohibited.

C. Exemption for Displaying a Work

Section 29.4(1) of the *Copyright Act* provides an additional exemption to infringement of copyright. Pursuant to this section it is not an infringement of copyright to reproduce a copyright-protected work, or do any other necessary act, in order to display the work on the premises of a university for the purpose of education or training. This exemption extends beyond fair dealing in that the exemption permits the display of more than a short excerpt of a work. There is however a limitation on the section 29.4(1) exemption. The exemption does not apply, except for the making of a manual reproduction (e.g. on a white board), if copies of the work are available for sale in Canada within a reasonable time and at a reasonable price, and the copies can may be located with reasonable effort.

D. Exemption for a Lesson

Section 30.01 of the *Copyright Act* provides an exemption for a lesson. A lesson would include a lecture, and a presentation, such as a PowerPoint presentation, presented in a classroom.

For the exemption in section 30.01 to apply, recordings or reproductions of the lesson must be destroyed within 30 days after the day on which the students enrolled in the course of which the lesson forms part have received their final course evaluation. This would mean that all copies of a presentation stored on an LMS pursuant to the exemption in section 30.01 must be destroyed, and not merely rendered inaccessible to students, within the 30 day period.

The following activities are permissible under section 30.01:

- (vii) The exemption permits the posting of a classroom presentation presented in a classroom that contains a work displayed in the classroom pursuant to the exemption in section 29.4(1) to a course website on an LMS stored on a secure server or other device. It also permits communicating the presentation to students in the course of study in which the presentation was given. The communication can be through posting the presentation to a course website on an LMS stored on a secure server or other device that is only accessible by students enrolled in the course of study for which the presentation was made.
- (viii) The exemption also permits the recording of a lecture or classroom presentation in which a work is displayed pursuant to the exemption in section 29.4(1) and permits communicating the recording to students in the course of study in which

the recording was made. The communication can be through posting a recording to a course website stored on an LMS in the same circumstances described above with respect to a classroom presentation.

- (ix) Finally, the exemption would permit the recording of a lecture or classroom presentation during which an audiovisual work or sound recording was performed and the communication to students enrolled in the course of study for which the lecture or presentation was given, including a communication through a course website on an LMS to such students in the same circumstances described above with respect to a classroom presentation. A further requirement with respect to an audiovisual work and a sound recording is that the audiovisual work and the sound recording is not an infringing copy or the person responsible for the performance had no reasonable grounds to believe that the audiovisual work or sound recording was an infringing copy.

E. Relationship between Fair Dealing and the Exemptions for Displaying a Work and a Lesson

Fair dealing and the exemptions for displaying a work and a lesson are distinct and separate exemptions under the *Copyright Act*. The Fair Dealing Policy may apply in circumstances in which these latter two exemptions also apply. For example, a faculty member may post to his or her course website on the university LMS a classroom presentation which includes a short excerpt of a copyright-protected work. The faculty member can rely on the Fair Dealing Policy for posting the classroom presentation rather than the exemption for a lesson and not have to destroy the classroom presentation within the 30 day period as required by section 30.01. If, on the other hand, the classroom presentation contains more than a short excerpt of a copyright-protected work, the faculty member cannot rely on the Fair Dealing Policy and instead must ensure that the exemption for a lesson applies and that the classroom presentation is destroyed within the 30 day period as required by section 30.01. Because of the destruction requirement, a faculty member may prefer following the Fair Dealing Policy rather than the exemption for a lesson and only include a short excerpt in a classroom presentation that is to be posted to a course website.

Appendix #3

Fair Dealing Guidance for Students

This document provides guidance for students on the fair dealing exemption to copyright infringement.

Copyright Infringement and Exemptions

It is an infringement of copyright to copy all or a substantial part⁴ of a copyright-protected work or to communicate all or a substantial part of a copyright-protected work to the public⁵ by telecommunication without the consent of the holder of the copyright, unless copying or communicating the work falls within an exemption from copyright infringement. One of the main exemptions is the fair dealing exemption.

The university does not condone copyright infringement by students. Students who copy or communicate copyright-protected works should either obtain the permission of the copyright owner or be satisfied that copying or communicating the works falls within one of the exemptions in the *Copyright Act*. The university is not liable for any infringing copies made or communicated by students including such copies made or communicated using copiers or scanners made available by the university.

The Fair Dealing Exemption

The fair dealing exemption in the *Copyright Act* (sections 29, 29.1 and 29.2) provides that fair dealing with a copyright-protected work for one of the following eight purposes: research, private study, criticism, review, news reporting, education, satire or parody, does not infringe copyright. Any fair dealing for the purpose of news reporting, criticism or review must however mention the source and, if given in the source, the name of the author or creator of the work.

Depending on the circumstances, a student may copy or communicate an extract of a copyright-protected work under the fair dealing exemption without the permission of the copyright holder and without infringing copyright.

The Fair Dealing Policy

The university has adopted the Fair Dealing Policy for Universities (“Fair Dealing Policy”). The policy permits faculty members, instructors and staff members to communicate and reproduce short excerpts of copyright-protected works for specified purposes without infringing copyright. The Fair Dealing Policy applies to students only to the extent that a student is an employee of the

⁴ For a discussion of what constitutes a substantial part of a copyright-protected work see the Fair Dealing Policy for Universities: General Application to be found at http://www.copyright.mcmaster.ca/content/fair_dealing_policy

⁵ In general, a communication is to the public if the recipients are not restricted to individuals that are purely in a domestic relationship.

university, e.g., acting as a teaching assistant or instructor. A student who is not acting as an employee of the university may look to the policy as a general guideline on how the fair dealing exemption can be applied to his or her copying. A copy of the Fair Dealing Policy can be found [here](#).

Definition of Short Excerpt

The Fair Dealing Policy defines a short excerpt as follows:

A short excerpt means:

- (a) up to 10% 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

provided that in each case, no more of the work is copied than is required in order to achieve the allowable purpose.

For information regarding the Fair Dealing Policy and Canada's copyright law, contact McMaster's Copyright Officer at copyright@mcmaster.ca

Appendix #4

Application of the Fair Dealing Policy for Universities to Library Copying

This document provides guidance on the application of the Fair Dealing Policy for Universities (the “Fair Dealing Policy”) to the copying and communication of short excerpts of copyright-protected works by the university library. This document does not include copying or communicating works that may be conducted by a library on behalf of any person, or for document delivery pursuant to the exemptions contained in section 30.2 of the *Copyright Act*. If fair dealing does not apply, one of the exemptions contained in section 30.2 may apply, although certain conditions not applicable to fair dealing may have to be met.

Definition of Short Excerpt

The Fair Dealing Policy permits copying and communicating a short excerpt from a copyright-protected work in the circumstances described in the policy. Section 4 of the policy defines a short excerpt as follows:

4. A short excerpt means:
 - (a) up to 10% 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

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- (g) an entire entry from an encyclopedia, annotated bibliography, dictionary or similar reference work

provided that in each case, no more of the work is copied than is required in order to achieve the allowable purpose.

There is a more detailed discussion of what a short excerpt means in the document entitled Application of the Fair Dealing Policy for Universities: General Application to be found at http://www.copyright.mcmaster.ca/content/fair_dealing_policy.

Document Delivery

The Fair Dealing Policy applies to copying and communicating a short excerpt of copyright-protected work for document delivery to another non-profit university or college library⁶. The short excerpt may be provided to the library requesting the copy or directly to the patron of that library. The short excerpt may be copied onto paper or copied and communicated in electronic form, provided that the following safeguards are met:

7. if the copy is made onto paper:
 - (a) the university library making the copy has received from the requesting library written confirmation that the copy is required by a patron of that library for a fair dealing purpose and that the patron is a student, staff member or faculty member of the institution requesting the copy; and
 - (b) the copy is marked with the following notice:

This copy was made pursuant to the Fair Dealing Policy of the University of which may be found at http://www.copyright.mcmaster.ca/content/fair_dealing_policy. The copy may only be used for the purpose of research, private study, criticism, review, news reporting, education, satire or parody. If the copy is used for the purpose of review, criticism or news reporting, the source and the name of the author must be mentioned. The use of this copy for

⁶ The Fair Dealing Policy was written to clarify fair dealing for access to university resources. Fair dealing has wider application and may be legitimately and reasonably relied upon in other circumstances. For example, subject to a consideration of the facts, fair dealing may apply to an interlibrary loan request from a local public or other non-profit library.

any other purpose may require the permission of the copyright owner.

8. if the copy is made and delivered in electronic form:
 - (a) the safeguard referred to in (a)(i);
 - (b) the notice referred to in (a)(ii) be on the electronic copy or be otherwise displayed to the university or college library and the library patron; and
 - (c) any intermediate paper copy used to make the electronic copy is destroyed promptly after the electronic copy is transmitted.

A copy of a short extract of a copyright-protected work copied and communicated to a university library under fair dealing is a lawful copy. The receiving library may further copy and communicate the short excerpt pursuant to the Fair Dealing Policy (e.g. for posting on a library reserve system – see below).

Library Reserve

The Fair Dealing Policy also applies to copying and communicating a short excerpt of a copyright-protected work for library reserve. The short excerpt may be copied onto paper, or copied and communicated in electronic form, from any copyright-protected course materials, including a course pack, provided that the following safeguards are met:

9. if the copy is made onto paper:
 - (a) a request to put the short excerpt on library reserve is made by or on behalf of a faculty member and in respect of a specific course or program of instruction;
 - (b) the number of copies made does not exceed the number of students enrolled in the course of instruction;
 - (c) the copy is used only for the purpose of library reserve by students enrolled in the university; and
 - (d) the copy is marked with the following notice:

This copy was made pursuant to the Fair Dealing Policy of the University of which may be found at http://www.copyright.mcmaster.ca/content/fair_dealing_policy. The copy may only be used for the purpose of research, private study, criticism, review, news reporting, education, satire or parody. If the copy is used for the purpose of review, criticism or news reporting, the source and the name of the author must be mentioned. The use of this copy for any other purpose may require the permission of the copyright owner.

10. if the copy is made in electronic form:
 - (a) the safeguards referred to in (c)(i) and (c)(iii);
 - (b) the notice referred to in (c)(iv) be on the electronic copy or be otherwise displayed to students who access the electronic copy; and
 - (c) the electronic copy is maintained on a secure computer or device (e.g. password protected) with access restricted to students enrolled in the university and faculty.

Library Copiers and Scanners

The university does not have control over students and other patrons who have access to photocopiers and scanners in the university library. However, as a protection against copyright infringement by students and other library patrons, the university should post a notice in close proximity to each photocopier or scanner in the university library advising that copyright law governs the making of copies, and the communicating to the public by telecommunication of copyright-protected works; that fair dealing for the purpose of research, private study, education, parody, satire, criticism, review or news reporting is not an infringement of copyright; and that the university is not responsible for infringing copies made by users of the photocopier or scanner. A sample notice is attached as Appendix 4A.

Appendix 4A – Sample Notice

Notice

Canada's copyright law provides for copyright to subsist in literary, dramatic, musical and artistic works. The law governs the making of photocopies or other reproductions of copyright-protected works and communicating such works to the public by telecommunication. Certain copying and communicating of those works may be an infringement of copyright. Copyright law provides that fair dealing for the purpose of research, private study, education, parody, satire, criticism, review or news reporting is not an infringement of copyright.

The university is not liable for any infringing copies made or communicated using copiers or scanners made available by the university.

The university has adopted a Fair Dealing Policy to assist in determining what may be copied or communicated without infringing copyright. Subject to various qualifications and safeguards, the Fair Dealing Policy permits copying and communicating short excerpts. The Fair Dealing Policy defines a short excerpt as follows:

4. A short excerpt means:
 - (a) up to 10% 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

provided that in each case, no more of the work is copied than is required in order to achieve the allowable purpose.

For information regarding the Fair Dealing Policy and Canada's copyright law, go to <http://www.copyright.mcmaster.ca> or contact McMaster's Copyright Officer at copyright@mcmaster.ca

Appendix #5

Application of the Fair Dealing Policy for Universities to Learning Management Systems

This document provides guidance on the application of the Fair Dealing Policy for Universities (“Fair Dealing Policy”) to a Learning Management System (“LMS”).

Guiding Principle

A guiding principle behind the Fair Dealing Policy is that copying or communicating a copyright-protected work under the Policy is not to substitute for the purchase of the work that was copied or communicated. In order to respect that principle, it is necessary to implement certain safeguards for the holders of copyright in the works copied for inclusion in an LMS.

Definition of Short Excerpt

Section 4 of the Fair Dealing Policy defines a short excerpt as follows:

4. A short excerpt means:
 - (a) up to 10% 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

provided that in each case, no more of the work is copied than is required in order to achieve the allowable purpose.

Inclusion of Short Excerpts in an LMS

Under the Fair Dealing Policy a short excerpt of a copyright-protected work may be posted to an LMS. The LMS may deliver a short excerpt of a copyright-protected work stored in its system, or it may deliver such an excerpt from a separate electronic reserve system. Additional guidance for the posting of short extracts of audiovisual works, and musical works is set out in the application documents that discuss those works. Those documents may be found [here](#).

Safeguards

In order to respect the guiding principle discussed above and to ensure that the short excerpts are only accessible by those who intend to use the excerpts for one of the fair dealing purposes, the following safeguards must be met:

- V. The LMS must be operated by or under the control of the university. The Fair Dealing Policy does not apply to the posting of short excerpts to a wiki, a blog or a service offered by a third party such as Dropbox, RefWorks or Mendeley.
- VI. The LMS must be stored on a secure server or other device (e.g. password protected).
- VII. The short excerpts posted to the LMS must only be accessible by students enrolled in the course, unit or program of instruction for which the excerpts have been posted and by faculty members or university staff that require access to the LMS.
- VIII. To give students an option of how to access course materials the same short excerpt may be made available to students through an LMS or in a course pack. However, no more than a short excerpt from a work from across all editions of a copyright-protected work may be copied and made available to students during a specific course

of instruction irrespective of the format in which it is made available (e.g. in paper or electronic form).

- IX. If content is uploaded or posted to an LMS in a centralized process involving university administrative staff, those staff should review the content posted to the LMS to ensure that copies of copyright-protected works are posted to the LMS in accordance with the Fair Dealing Policy and this guidance document or that the posting of the copies does not infringe copyright for other reasons.
- X. If content is uploaded or posted to an LMS by faculty members or their staff, the faculty or staff should be required to identify the reason that they are entitled to post each work or extract (e.g. permission obtained from the copyright holder, public domain, fair dealing, other exemption under the *Copyright Act* (specify) or other (specify)). For certain content posted to the LMS (e.g. classroom presentations containing extracts from a number of works) multiple reasons may apply. As an alternative, faculty and staff should be informed of what materials can be posted on the LMS without infringing copyright and periodically a random selection of course websites should be reviewed to ensure that the content posted to the LMS does not infringe copyright. As a further alternative, the university administrative staff that centrally manages the LMS should review the content to be uploaded or posted to ensure that the content would not infringe copyright.
- XI. Faculty members or their staff who post content prepared by a student on an LMS should confirm that the content does not include copies of copyright-protected works that infringe copyright.

Including Materials Beyond Short Excerpts on an LMS

If an extract to be included on an LMS exceeds the limitations of a short excerpt as set out in the Fair Dealing Policy, transactional permission for making the copy should be secured from the copyright holder or from the holder's licensing agent. Where a transactional permission is used to make a copy of an excerpt onto an LMS, the permission or a record of the permission should be retained (in paper or electronic form).

In addition, the university may include on an LMS copies of copyright-protected works for which the university has a licence with the publisher or aggregator, as long as the terms of the licence permit the making of copies for inclusion on an LMS. A copyright-protected work made available to the university under a licence with a publisher or aggregator that prohibits the use of extracts on an LMS cannot be copied and included in an LMS. The terms and conditions of the licence take precedence over the Fair Dealing Policy.

Guidance to Students

The university does not have control over students who post content to websites including on an LMS or who attach content to emails including emails posted to an LMS. Each semester students should be informed of the university's copyright policy or copyright guidance for students, and for each course website posted to the LMS, each student should confirm that he or she will respect the university's copyright policy or copyright guidance for students and will not post on the LMS works that infringe copyright. In the event that an LMS used by the university does not have the functionality to permit each student to confirm that information and agree that the student will not post on the LMS works that infringe copyright for each course website posted to the LMS, each student should at least annually confirm that information and provide that agreement (e.g. through notification given to the university on obtaining a student number or login ID, or through a similar process). In addition, each course homepage on the LMS should include a prominent notification to the effect that students are required to respect the university's copyright policy and not post on the LMS works that infringe copyright.

Appendix #6

Application of the Fair Dealing Policy for Universities to the Production and Sale of Course Packs

Background

A course pack comprises a compilation of excerpts of different works to be used as required or supplementary readings by students enrolled in a course of instruction.

The university may rely on the Fair Dealing Policy for Universities (“Fair Dealing Policy”) and the guidelines in this document to make copies of short excerpts (as that term is defined in the Fair Dealing Policy) for use in course packs. This document provides guidance on the application of the Fair Dealing Policy to the production and sale of course packs by the university.

Guiding Principles

A guiding principle behind the Fair Dealing Policy is that copying or communicating a copyright-protected work under the Fair Dealing Policy is not to substitute for the purchase of the work that was copied or communicated. In order to respect that principle, it is necessary to implement certain safeguards for the owners of copyright in the works copied for inclusion in course packs.

A guiding principle behind the application of the Fair Dealing Policy to the production and sale of course packs is to ensure that no “profit” is made on course pack production and sale. If there is no “profit” made in the production or sale of course packs and, the other requirements of the Fair Dealing Policy, as elaborated in this document, are followed, then the making and sale of course packs incorporating copies of short excerpts of copyright-protected works would be permitted under fair dealing.

The policy does not permit the university to send a course pack to a commercial copy shop for the latter to reproduce copies for students.

Definition of Short Excerpt

The Fair Dealing Policy permits the communication and reproduction of a short excerpt from a copyright-protected work in the circumstances described in the Fair Dealing Policy. Section 4 of the Fair Dealing Policy defines a short excerpt as follows:

4. A short excerpt means:
 - (a) up to 10% 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

provided that in each case, no more of the work is copied than is required in order to achieve the allowable purpose.

To give students the choice of how to access course materials, the same short excerpt may be made available to students in a course pack, a class handout, or through the university's learning management system. However, no more than a short excerpt from a work may be copied and made available to students during a specific course of instruction irrespective of the number of formats in which it is made available. Furthermore, no more than a short excerpt from across all editions of a copyright-protected work should be included in a course pack.

Including Materials Beyond Short Excerpts in a Course Pack

If an extract to be included in a course pack exceeds the limitations of a short excerpt as set out in the Fair Dealing Policy, transactional permission for making the copies should be secured from the copyright holder or from the holder's licensing agent.

In addition, the university may include in course packs copies of copyright-protected works for which the university has a licence with the publisher or aggregator, as long as the terms of the licence permit the making of copies for inclusion in course packs. A copyright-protected work made available to the university under a licence with a publisher or aggregator that prohibits the use of extracts in course packs cannot be copied and included in a course pack. Any copying and/or distribution restrictions contained in the licence will take precedence over the Fair Dealing Policy.

Records

Records should be created and maintained (in paper or electronic form) that show for each course pack:

- a) the identity of each work included in the course packs,

- b) identification of the publication from which the excerpt was copied (if applicable),
- c) the length of each excerpt included,
- d) the basis upon which each excerpt was copied (e.g. fair dealing, library licence, work made available over the Internet, transactional licence),
- e) if the basis upon which the excerpt was copied was fair dealing of an excerpt that is 10% or less of the work, the number of pages copied and the total number of pages of the work from which the copies were made, and
- f) where a transactional permission is used to copy an excerpt for a course pack, a copy of the transactional permission.

Notification

Each copy of a course pack made by the university that includes copies of short excerpts of copyright-protected works made under the Fair Dealing Policy should include the following notice printed in a prominent location on the course pack (e.g. on the front cover).

This course pack is made in accordance with the university's Fair Dealing Policy for sale to and use by students enrolled in the course of study for which it was made. This course pack may also include copyright-protected material pursuant to permissions granted by the copyright holder. Any reproduction or other use of this material is strictly forbidden.

Process for Production of Course Packs

Short excerpts that are copied under the Fair Dealing Policy must be copied by the university⁷. The university may not purchase such copies from a third party. If it is necessary for a university to contract with a third party to produce and sell course packs to the university, such copying cannot be undertaken under the Fair Dealing Policy⁸.

Retention of Master Copy

The university may retain one paper or electronic copy of a course pack to be used only for the purpose of making course packs in the future. If the copy is an electronic copy, the copy should be maintained on a secure computer or device (e.g. password protected) with access restricted to those individuals responsible for course pack production.

⁷ The individuals who produce course packs should be employees of the university or engaged by the university under a contract for services (i.e. an independent contractor) such as with a temporary employment agency. In addition, the individuals that produce course packs should be supervised by university employees.

⁸ A university that has entered into the model licence agreement with Access Copyright may arrange for third parties to produce course packs in accordance with the terms of clause 16 of the agreement.

The Sale of Course Packs

Course packs that incorporate copies of short excerpts of copyright-protected works made under the Fair Dealing Policy must be sold by the university directly to students. The course packs must not be sold to an intermediary (e.g. a student association) that sells the course packs to students.

Pricing

The amount charged by the university for the production and sale of a course pack should not exceed the university's cost to produce and sell the course pack. These may include a reasonable allocation of overhead costs incurred by the university.

The following examples show how overhead costs could be allocated. With respect to course pack production, assume that in the previous year:

- (a) the cost of the consumables required to make a photocopy (e.g. toner and paper) were 1.5 cents per page;
- (b) the other production costs of course packs (e.g. salaries, leasing of photocopy equipment and the cost to operate the production facilities) were \$100,000; and
- (c) the production facilities produced 10,000 course packs.

The base price (cost of goods) of a 100 page course pack for the bookstore would be \$11.50 (\$1.50 in consumables costs + \$10.00 in other production costs).

If a university sells the course pack through a bookstore that is operated by the university, in addition to the direct costs of making the course pack, a reasonable allocation of the cost of operating the bookstore may be included in the purchase price. Assume that in the previous year:

- a) course packs were 5 percent of the cost of goods sold by the bookstore in the previous year; and
- b) the cost of operating the bookstore for the current year is \$1 million.

There is therefore \$50,000 in distribution costs that can be allocated to course packs. If the bookstore estimates that it will sell 25,000 course packs, then it could allocate \$2 of distribution costs to each course pack. The course pack that had a consumables cost of \$1.50, plus other production costs of \$10.00, plus distribution costs of \$2.00 could therefore be sold by the bookstore to students for \$13.50.

The distribution costs allocated to course packs should be recalculated on a periodic basis.

Determination regarding the Application of the Fair Dealing Policy

If any person responsible for making a course pack, whether a faculty member and his or her staff, or a central course pack production staff, is uncertain about the application of the Fair Dealing Policy to the production and sale of course packs, that person should consult with the university staff responsible for administering the Fair Dealing Policy or his or her delegate for an evaluation of whether the copying would be fair dealing.

If making a copy falls outside of the Fair Dealing Policy, e.g. making cumulatively a copy of more than a short excerpt across different formats, other exceptions in the *Copyright Act* may be available, or copying permission may be secured through existing licences in favour of the university. Otherwise, the copyright holder's permission will need to be sought.

Appendix #7

Application of the Fair Dealing Policy for Universities to Administrative Copying

This document provides guidance on the application of the Fair Dealing Policy for Universities (“Fair Dealing Policy”) to making and communicating copies of short excerpts of copyright-protected works for administrative purposes within the university (“Administrative Copying”). Administrative Copying includes copying copyright-protected works made for one of two purposes, namely, the development of a course of study, unit or program offered by the university, and the governance or administration of the university or of a faculty or department of the university.

The Fair Dealing Exemption

Fair dealing with a copyright-protected work under the *Copyright Act* is exempt from copyright infringement. To fall within the exemption the dealing must be for one of eight specified purposes and must be fair. The specified purposes are research, private study, criticism, review, news reporting, education, satire, or parody. For Administrative Copying to fall within the fair dealing exemption, the copying must be for one of those purposes. The most relevant purpose for Administrative Copying is that of education.

Definition of Short Excerpt

Section 4 of the Fair Dealing Policy defines a short excerpt as follows:

4. A short excerpt means:
 - (a) up to 10% 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

provided that in each case, no more of the work is copied than is required in order to achieve the allowable purpose.

Administrative Copying for Educational Purposes

With respect to Administrative Copying, under the Fair Dealing Policy a short excerpt of a copyright-protected work may be copied and communicated if the purpose of the copying is directly tied to the education of students, subject to the safeguards discussed below. An example of Administrative Copying that would fall within the Fair Dealing Policy is the making of a copy of a short extract of a copyright-protected work and emailing copies to members of a faculty or department committee for use in developing a course of study, unit or program to be offered by the university. An example of Administrative Copying that would not fall within the Fair Dealing Policy is the making of a copy of a copyright-protected work for the purpose of training administrative staff.

Safeguards

In order to protect the interests of holders of copyright in copyright-protected works, Administrative Copying that falls within the Fair Dealing Policy must comply with the following safeguards:

- XII. Copies of the short excerpt of a copyright-protected work are only provided to faculty members, administrative staff and students enrolled in the university who require the copies for the educational purpose for which it was made.
- XIII. If a copy of a short excerpt of a copyright-protected work is made available electronically on a server or other device, the server or other device must be secure (e.g. password protected) and the copy must be accessible only by the persons referred to in item 1.

It would be permissible to email a short excerpt of a copyright-protected work to faculty and administrative staff who require the short excerpt to attend to their administrative duties provided that the making of the short excerpt otherwise complies with this guidance document (i.e. that the purpose of the copying is directly tied to the education of students).

Administrative Copying Outside the Fair Dealing Policy

Administrative Copying of copyright-protected works that is made for the governance or administration of the university or a faculty or department of the university does not fall within the Fair Dealing Policy. Such copying would include copying of copyright-protected works and

providing the copies to members of the board of governors or to members of a faculty or department committee for governance or general administrative purposes relating to the operation of the university. For such Administrative Copying it is necessary to secure the permission of the holder of copyright. Such permission may be available through one of the university's digital licences or obtained by way of a transactional licence. For further information contact McMaster's Copyright Officer at copyright@mcmaster.ca

Appendix #8

Application of the Fair Dealing Policy for Universities to Musical Works and Sound Recordings

This document provides guidance on the application of the Fair Dealing Policy for Universities (the “Fair Dealing Policy”) and the exemption under section 29.5 of the *Copyright Act* to the use of musical works and sound recordings by the university.

A. Copyright in Musical Works

Copyright subsists in every musical work. The subsistence of copyright does not depend on whether or not the musical work is published. The Fair Dealing Policy applies both to published and unpublished musical works.

Musical works include both a musical composition and lyrics. A composer and a lyricist may own copyright in their separate contributions to a musical work. The term of copyright in the musical composition is for the life of the composer and a period of 50 years from the end of the year in which the composer died. The term of copyright in the lyrics is for the life of the lyricist and a period of 50 years from the end of the year in which the lyricist died. As an example, although copyright in the musical composition may have expired, copyright may still subsist in the lyrics.

It is common for new arrangements to be prepared for musical works that are in the public domain. It is likely that copyright will subsist in a new arrangement. If so, permission from the copyright holder may be required to use the new arrangement. Any copyright in the new arrangement will not affect the ability to use the original musical work.

B. Copyright in Sound Recordings

Copyright subsists in a sound recording separate and apart from any copyright that may subsist in a musical work, the performance of which is embedded in the sound recording. The term of copyright in a sound recording is different from the term of copyright in a musical work. In general, the term of copyright in a sound recording is 50 years after the end of the calendar year in which the sound recording was first recorded.

C. Sourcing of Musical Works

Some musical works are sourced from distributors who provide their musical works under licence agreements that may limit the circumstances in which their works may be copied or communicated. Any provision in a licence agreement that restricts the circumstances in which a musical work may be copied or communicated takes precedence over the Fair Dealing Policy. It is therefore necessary to abide by the terms of the licence agreement.

D. The Fair Dealing Policy

The Fair Dealing Policy permits faculty members and administrative staff to copy short excerpts of copyright-protected musical works and sound recordings and to communicate short excerpts of copyright-protected musical works and sound recordings by telecommunication to students for research, private study and educational purposes, among other purposes. A musical work typically takes the form of a musical score published as sheet music or in a book containing a number of musical scores. Communicating a short excerpt of a musical work or a sound recording by telecommunication to students includes emailing the excerpt to students or making the excerpts available to students on a learning management system.

A sound recording may be protected by a digital lock that restricts access to the recording or prohibits copying of the recording. The Fair Dealing Policy does not apply if it is necessary to circumvent a digital lock in order to copy a short excerpt of a copyright-protected sound recording. It is however permissible to reproduce a short excerpt under the policy using an audio recording device when the recording is being played on audio equipment (e.g. through a stereo system) where the playing of the recording does not require circumventing a digital lock or where the playing of the recording resulted from lawfully decrypting the recording.

Short Excerpt

The definition of a short excerpt in section 4 of the Fair Dealing Policy includes the following:

4. A short excerpt means:
 - (a) up to 10% of a copyright-protected work (including a literary work, musical score, sound recording, and an audiovisual work) ...
 - (f) an entire single poem or musical score from a copyright-protected work containing other poems or musical scores ...

provided that in each case, no more of the work is copied than is required in order to achieve the allowable purpose.

Application of the Fair Dealing Policy to Musical Works and Sound Recordings

Under sections 1 and 4(a) of the Fair Dealing Policy a faculty member or administrative staff may copy or communicate up to 10% of a single musical work that is in the form of sheet music. However, if the musical work appears in a book containing other musical works, under sections 1 and 4(f) of the Fair Dealing Policy a faculty member or administrative staff may copy or communicate the entire musical work.

Under sections 1 and 4(a) of the Fair Dealing Policy a faculty member or administrative staff may copy or communicate up to 10% of a sound recording.

The Fair Dealing Policy would permit a faculty member or administrative staff to make a copy of a short excerpt of a copyright-protected musical work or a short excerpt of a sound recording for inclusion in a classroom presentation or in a learning management system. For more information about the application of the Fair Dealing Policy to copyright-protected works posted on a library management system see the document entitled Application of the Fair Dealing Policy for Universities to Learning Management Systems to be found [here](#).

Safeguards

In order to protect the interests of holders of copyright in copyright-protected musical works and sound recordings, the copying and communicating of those works and recordings must comply with the following safeguards:

- XIV. Copies of short excerpts of copyright-protected musical works and sound recordings are only to be provided to students enrolled in a course of study and to faculty members and administrative staff of the university.
- XV. Copies of short excerpts of copyright-protected musical works and sound recordings are only to be communicated to students enrolled in a course of study and to other faculty members and administrative staff of the university.

An exception to these safeguards relates to a faculty member sharing a copy of such works or recordings with faculty members or students within another university with whom the faculty member is engaged in collaborative research. For more information on faculty members copying and communicating copyright-protected works for research purposes see the document entitled Application of the Fair Dealing Policy for Universities to Teaching and Research by University Faculty to be found [here](#).

E. The Exemptions for Performing a Musical Work and a Sound Recording

The Fair Dealing Policy does not apply to the performance in public of a musical work or a sound recording. Instead, faculty members and administrative staff can rely on the exemptions in

section 29.5 of the *Copyright Act*. Section 29.5(a) permits an educational institution or a person acting under its authority (e.g. a faculty member) to perform live in public, primarily by students of the educational institution, a musical work, among other works, on the premises of the university for educational or training purposes before an audience consisting primarily of students, instructors or any person who is directly responsible for setting the curriculum. Section 29.5(b) permits an educational institution or a person acting under its authority to perform in public a sound recording which embodies a musical work. The same restrictions as to the premises, purposes and audience applicable to musical works also apply to sound recordings. In addition, the sound recording must either not be an infringing copy or the person responsible for the performance must have no reasonable grounds to believe that it is an infringing copy.

The exemptions in section 29.5(a) and (b) apply to all or any part of a musical work or a sound recording. For example, although only a short excerpt of a copyright-protected musical work and sound recording may be copied or communicated under the Fair Dealing Policy, an entire musical work and sound recording may be performed under the exemptions in sections 29.5(a) and 29.5(b).

Appendix #9

Application of the Fair Dealing Policy for Universities to Audiovisual Works

This document provides guidance on the application of the Fair Dealing Policy for Universities (the “Fair Dealing Policy”) and the exemptions under sections 29.5(d) and 30.04 of the *Copyright Act* to the use of audiovisual works by the university.

A. Sourcing Copies of Audiovisual Works

Audiovisual works are typically sourced from distributors. Some distributors supply audiovisual works under licence agreements that may limit the circumstances in which their works may be copied, performed or communicated. Any provision in a licence agreement that restricts the circumstances in which an audiovisual work may be copied, performed or communicated takes precedence over the Fair Dealing Policy and the exemption under section 29.5(d). When sourcing an audiovisual work consideration should be given to the restrictions in any licence agreement that would impact the use of the audiovisual work for educational purposes.

B. The Fair Dealing Policy

The Fair Dealing Policy permits faculty and staff members to copy short excerpts of a copyright-protected audiovisual work and to communicate short excerpts of the audiovisual work by telecommunication to students for research, private study and educational purposes, among other purposes. Audiovisual works include motion picture films, television programs and videos. Communicating a short excerpt of an audiovisual work by telecommunication to students includes emailing the excerpt to students and making the excerpt available to students on a learning management system.

The Fair Dealing Policy does not however permit the circumvention of digital locks to obtain access to a copyright-protected audiovisual work. For more information on digital locks see the document Application for Fair Dealing Policy for Universities: General Application that can be found [here](#).

Motion pictures and other audiovisual works that are published on DVDs are typically protected by a digital lock known as the Content Scrambling System (“CSS”). The Fair Dealing Policy does not apply if it is necessary to circumvent a CSS lock in order to copy a short excerpt of a copyright-protected audiovisual work recorded on DVD. It is however permissible to reproduce a short excerpt under the policy through using a video recording device, e.g. a camcorder, to record a short excerpt from a computer, television screen or projection. It is also permissible to use screen capture software that enables the copying of DVD content after the content has been lawfully decrypted by a licensed computer DVD player. For further information about using screen capture software to reproduce a short excerpt of a copyright-protected audiovisual work contact McMaster’s Copyright Officer at copyright@mcmaster.ca

Short Excerpt

The definition of a short excerpt in section 4 of the Fair Dealing Policy includes the following:

4. A short excerpt means:
 - (a) up to 10% of a copyright-protected work (including a literary work, musical score, sound recording, and an audiovisual work) ...

provided that in each case, no more of the work is copied than is required in order to achieve the allowable purpose.

The Fair Dealing Policy permits a faculty member or administrative staff to make a copy of up to 10% of a copyright-protected audiovisual work for inclusion in a classroom presentation or in a learning management system. For more information about the Fair Dealing Policy and learning management systems see the document *Application of the Fair Dealing Policy for Universities to Learning Management Systems* that can be found [here](#).

Safeguards

In order to protect the interests of holders of copyright in copyright-protected audiovisual works, the copying and communicating of those works under the Fair Dealing Policy must comply with the following safeguards:

- XVI. Copies of short excerpts of a copyright-protected audiovisual work are only to be provided to students enrolled in a course of study and to other faculty members and administrative staff of the university.
- XVII. Copies of short excerpts of a copyright-protected audiovisual work are only to be communicated to students enrolled in a course of study and to other faculty members and administrative staff of the university.

An exception to these safeguards relates to a faculty member sharing a copy of such works or recordings with faculty members or students within another university with whom the faculty member is engaged in collaborative research. For more information on faculty members copying and communicating copyright-protected works for research purposes see the document entitled *Application of the Fair Dealing Policy for Universities to Teaching and Research by Faculty* to be found [here](#).

C. The Exemption for Performing an Audiovisual Work

The Fair Dealing Policy does not apply to the performance in public of an audiovisual work. Instead, faculty members and administrative staff can rely on the exemption in section 29.5(d) of the *Copyright Act*. That exemption permits an educational institution or a person acting under its authority to perform in public an audiovisual work on the premises of the university for educational or training purposes before an audience consisting primarily of students, instructors,

or any person who is directly responsible for setting curriculum. The audiovisual work must either not be an infringing copy or the person responsible for the performance must have no reasonable grounds to believe that it is an infringing copy.

The exemption in section 29.5(d) applies to *performing* all or any part of an audiovisual work. It does not however permit the *copying* of any part of an audiovisual work. In particular, section 29.5(d) does not permit the copying of any part of an audiovisual work even if it is necessary to copy the work in order to perform it.

D. The Exemption for Works Available through the Internet

Section 30.04 of the *Copyright Act* permits reproducing, communicating and performing in public by an educational institution or a person acting under the authority of one for educational or training purposes of a copyright-protected work that is made available through the Internet. This includes an audiovisual work posted to the Internet including a YouTube video. There are a number of conditions that have to be met for the exemption to apply. For a discussion of the exemption see the document Application of the Fair Dealing Policy for Universities: General Application to be found [here](#).