

<b>Date of Issue</b>	March 2022
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<b>Subject</b>	<b>USE OF COPYRIGHT-PROTECTED WORKS FOR EDUCATION</b>
<b>References</b>	<a href="#">Copyright Act (R.S.C., 1985, c. C-42)</a> <a href="#">APM A2000 – Intellectual Property Rights</a> <a href="#">Copyright Matters! – Some Key Questions and Answers for Teachers</a> <a href="#">Unlocatable Copyright Owners</a> <a href="#">PPM 157, Use of Copyright-Protected Works for Education</a> <a href="#">Copyright Decision Tool</a> <a href="#">Socan</a> <a href="#">Re:Sound</a>
<b>Contact</b>	Business Services

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## 1. Purpose

- 1.1 This Administrative Procedures Memorandum (APM) sets out the guidelines describing conditions and limits of fair dealing for education for the use of copyright-protected material in compliance with the *Copyright Act* (R.S.C., 1985, c. C-42). This APM is based on the Ministry of Education PPM 157, Use of Copyright-Protected Works for Education issued June 21, 2013 and the Council of Ministers of Education, Canada (CMEC) booklet *Copyright Matters!* prepared to clarify copyright law.

## 2. Definitions

- 2.1 Copyright: refers to laws that regulate the use of the work of a creator, such as an artist or author. This includes copying, distributing, altering and displaying creative, literary and other types of work. Unless otherwise stated in a contract, the author or creator of a work retains the copyright. For a copyright to apply to a work, it must be an original idea that is put to use. The idea alone cannot be protected by copyright. It is the physical use of that idea, such as an illustration or a written novel that is covered under copyright law.
- 2.2 Copyright owner: a person or company who owns any of the exclusive rights of copyright in a work or a representative of a copyright owner.
- 2.3 Fair dealing: refers to user's rights that permit the use of a copyright-protected work for certain purposes, including education, without obtaining permission and without paying a fee to the copyright owner.
- 2.4 Use: refers to the reproduction or communication of a copyright-protected work in paper or electronic form.
- 2.5 User: refers to the person who reproduces or communicates a copyright-protected work, in paper or electronic form.

- 2.6 Users' rights: refers to the provisions in the *Copyright Act* that permit use of a copyright-protected work under certain conditions and limits without first obtaining permission and without paying a fee to the copyright owner. Users' rights include fair dealing.

### **3. Background**

The *Copyright Act* is the federal law that governs copyright in Canada. It is intended to balance the interests that people have in using copyright-protected works with the rights of creators to receive payment for the use of these works. The Act contains many users' rights provisions that allow for the use of copyright-protected work for specific purposes, one of which is known as "**fair dealing.**"

The *Copyright Modernization Act* was passed on June 29, 2012. A key amendment expanded the fair dealing provision to identify education as one of the eligible purposes for fair dealing. This means that all employees in elementary and secondary school settings may use copyright-protected works within set conditions and limits without obtaining permission or paying a fee to the copyright owner or a copyright collective.

In a landmark decision on July 12, 2012, the Supreme Court of Canada clarified that educators may copy short excerpts (as outlined in section 6.4) of copyright-protected works for students in their classes. This decision complements the addition of education as an eligible purpose for fair dealing in the *Copyright Act*.

### **4. Responsibilities**

#### **4.1 All Staff**

All staff are responsible for ensuring that their use of copyright-protected material complies with the law including:

- 4.1.1 'Fair Dealing Guidelines' as outlined in section 5 of this procedure;
- 4.1.2 another provision of the *Copyright Act* as outlined in section 7 Additional Users' Rights Applicable to Education of this this procedure; or,
- 4.1.3 obtaining permission of the copyright owner and/or where required paying a royalty fee.

#### **4.2 Principals/Supervisors**

Principals/Supervisors shall:

- 4.2.1 remind staff annually of their duty to comply with the copyright law as set out in this procedure. Training resources will be provided for this purpose; and,
- 4.2.2 post a general guide/poster outlining the kinds of copying that are permitted, as well as those which are prohibited, above all photocopying and printing equipment. The poster is found on the copyright page of the staff web.

#### **4.3 Legal Compliance**

The *Canadian Copyright Act* states that a person found guilty of infringement of public performance may be fined or imprisoned or both. Every individual involved in a copyright violation is liable.

**5. Fair Dealing Explained**

- 5.1 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, the following two tests must be passed:
- 5.1.1 the "dealing" must be **for a purpose stated in the *Copyright Act***: research, private study, criticism, review, news reporting, education, satire, and parody. Educational use of a copyright-protected work passes the first test; and,
  - 5.1.2 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 schools and post-secondary educational institutions.
- 5.2 These guidelines apply to fair dealing in non-profit K-12 schools and post-secondary educational institutions and provide reasonable safeguards for the owners of copyright-protected works in accordance with the *Copyright Act* and the Supreme Court decisions.

**6. Guidelines**

- 6.1 Staff in non-profit educational institutions 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 and parody.
- 6.2 Copying or communicating short excerpts from a copyright-protected work under these 'Fair Dealing Guidelines' for the purpose of news reporting, criticism or review should mention the source and, if given in the source, the name of the author or creator of the work.
- 6.3 A single copy of a short excerpt from a copyright-protected work may be provided or communicated to each student enrolled in a class or course:
- 6.3.1 as a class handout;
  - 6.3.2 as a posting to a learning or course management system that is password protected or otherwise restricted to students of a school or post-secondary educational institution; and,
  - 6.3.3 as part of a course pack.
- 6.4 A short excerpt means:
- 6.4.1 up to 10 percent of a copyright-protected work (including a literary work, musical score, sound recording, and an audiovisual work);
  - 6.4.2 one chapter from a book;
  - 6.4.3 a single article from a periodical;
  - 6.4.4 an entire artistic work (including a painting, print, photograph, diagram, drawing, map, chart, or plan) from a copyright-protected work containing other artistic works;
  - 6.4.5 an entire newspaper article or page;
  - 6.4.6 an entire single poem or musical score from a copyright-protected work containing other poems or musical scores; and,

- 6.4.7 an entire entry from an encyclopedia, annotated bibliography, dictionary or similar reference work.
- 6.5 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.
- 6.5.1 Copying, scanning, or printing materials intended for one-time use is strictly prohibited. “Materials intended for one-time use” are workbooks and exercise books into which a student records answers. These are materials created and intended for each student to have their own copy. Once a student completes the answers, these materials are of no use to another student.
- 6.6 Any fee charged by the educational institution for communicating or copying a short excerpt from a copyright-protected work must be intended to cover only the costs of the institution, including overhead costs.
- 6.7 School board staff and students must be mindful that some copying may not fall within the parameters set out in the ‘Fair Dealing Guidelines.’ When such copying occurs, two options exist. First, permission to copy can be sought from the copyright holder. Second, a royalty must be paid to the copyright holder. For information on what to do if you are unable to locate a copyright owner, please refer to the Copyright Board of Canada website at the following link [Unlocatable Copyright Owners](#).
- 6.8 **School Libraries**  
School libraries may:
- 6.8.1 make a copy of a copyright-protected work for the purpose of cataloguing, internal record-keeping, for insurance purposes, or police investigation, or make a copy for the purpose of restoration;
- 6.8.2 provided a replacement copy is not commercially available in a medium (print or digital) and of a quality that is appropriate for these purposes, school libraries may also:
- 6.8.2.1 make a copy of a work if the original is rare or unpublished and is deteriorating, damaged, or lost;
- 6.8.2.2 make a copy of a fragile document or recording for on-site consultation if the original cannot be viewed, handled, or listened to because of its condition; and,
- 6.8.2.3 make a copy if the original is in an obsolete format, or is in danger of becoming obsolete, or the technology to use the original is unavailable or is in danger of becoming obsolete.

## **7. Additional Users’ Rights Applicable to Education**

This section is based on information contained in the CMEC booklet Copyright Matters!. Please refer to the booklet for more detailed information on copyright law and the conditions and limits on the use of copyright-protected materials.

- 7.1 **Reproduction of a work to be displayed for the purpose of instruction**  
Educators may reproduce in paper or electronic form, a work protected by copyright in order to display the work in interactive whiteboards and digital projectors for the purpose of instruction, provided that the work is not commercially available in an appropriate medium for display.
- 7.2 **Tests and examinations**  
Educators may copy, translate, communicate electronically, show or play a copyright-protected work for a test or examination, provided that the work is not commercially available in an appropriate medium for the purpose of a test or examination.
- 7.3 **Use of statutes, regulations, and court decisions**  
Educators and students may copy and communicate the text of federal, provincial and territorial statutes, regulations, and judicial decisions for education purposes from all provinces and territories except Manitoba, Quebec and Nunavut.
- 7.4 **Reproduction in alternative formats for persons with perceptual disabilities**  
Students and educational institutions on behalf of a student may make a copy of a literary, dramatic, musical, or artistic work (excluding audio-visual works) in an alternative format designed for a person with a perceptual disability providing it is not already commercially available in an alternative format for the benefit of a student. Persons with perceptual disabilities include the blind and visually impaired and persons with learning and other physical disabilities. Educational institutions are prohibited from making a large-print book for a student with a perceptual disability without written permission from the copyright owner.
- 7.5 **School Libraries**  
School Libraries may use digital technologies such as email to deliver copyright-protected work as part of an interlibrary loan provided that measures are taken to protect against further distribution of the material.
- 7.6 **Playing sound recordings, listening to the radio and watching television programs (excluding music)**  
Educators may play sound recordings, listen to the radio and watch television programs as they are being transmitted (via over-the-air broadcast, cable, satellite, or the Internet) in the classroom provided that the use is for an educational purpose. This user's right does not apply to previously recorded radio and television programs.
- 7.7 **Performing plays and other works on school premises**  
Students may perform a work protected by copyright, such as a play. An example is the performance of a play in drama class. However, the performance of the play must meet the following conditions:
- 7.7.1 take place on school premises;
  - 7.7.2 be for educational purposes;
  - 7.7.3 be not-for-profit (i.e. any fee charged by the school for attending the performance of the work must only recover the cost associated with the performance, including overhead costs); and,
  - 7.7.4 take place before an audience consisting primarily of students of the school, persons acting under the authority of the school or any person who is directly responsible for developing or implementing a curriculum for the school.

**7.8 Performing music for educational purposes**

The public performance of music in elementary and secondary schools, whether recorded or live, is permitted if the performance is for educational purposes. Schools may also play sound recordings containing a musical work, listen to the radio, and watch television programs containing a musical work while the program is being transmitted (e.g. via over-the-air broadcast, cable, satellite or the Internet). However, the use of music must meet the following conditions:

- 7.8.1 take place on school premises;
- 7.8.2 be for educational purposes;
- 7.8.3 be not-for-profit (i.e. any fee charged by the school for attending the performance of the work must only be to recover the costs associated with the performance, including overhead costs); and,
- 7.8.4 take place before an audience consisting primarily of students of the school, persons acting under the authority of the school or any person who is directly responsible for developing or implementing a curriculum for the school.

Performances or other uses of music that are not for educational purposes, such as performances at school dances and sporting events, must be authorized by the copyright owner or by a copyright collective that represents the owner, such as the Society for Composers, Authors and Music Publishers of Canada (SOCAN). The Simcoe County District School Board (SCDSB) purchases SOCAN licensing for all schools annually for this purpose. (Please refer to *Copyright Matters!* for additional information about what activities require permission and the payment of royalties.)

**7.9 Use of copyright-protected works to create new works**

Anyone, including students and educators may use copyright-protected works to create new work provided the following conditions are met:

- 7.9.1 the new work may only be used for non-commercial purposes;
- 7.9.2 the original source must be mentioned;
- 7.9.3 the original work used to generate the content must have been legally acquired; and,
- 7.9.4 the resulting user-generated content must not substantially harm the market for the original work.

**7.10 News and news commentary programs from radio or television**

Educators, or a person acting under the authority of a school, may make a single copy of a news or news commentary for later viewing by students, providing that the copy is only made at the time the program is aired by the broadcaster or communicated over the Internet.

**7.11 Showing of audio-visual works on school premises**

Educators may show audio-visual works on school premises for educational purposes, such as movies on DVD or video, provided that the copy is not one that infringes on copyright law. Copies can be purchased or rented from a retail store or borrowed from a library or from a friend.



**7.12 Online learning**

Educators and schools may transmit lessons that contain copyright-protected materials to students in real time (i.e. synchronous learning) over the Internet, or record a lesson that contains such material and make it available for online (i.e. asynchronous learning). Students are permitted to make a copy of the lesson for their personal use. However, both students and schools are required to destroy recordings and copies within 30 days after the students enrolled in the course receive their final evaluations (final report cards) for the course.

**7.13 Educational use of the Internet**

The educational use of the Internet provision allows students and educators to use publicly available Internet material for their learning and educational pursuits. Publicly available materials are those legitimately posted online by content creators and copyright owners without any technical protection measures, such as a password, encryption systems, or similarly technology intended to limit access or distribution, and without a clearly visible notice prohibiting educational use. The provision requires that the source be mentioned.

**8. Public Performance Licenses Purchased by the SCDSB**

Any activities outside of the school day will continue to require licences. The following licences have been purchased.

**8.1 SOCAN and Re:Sound:**

SOCAN and Re:Sound administers the rights of public performance and communication to the public by telecommunication for its members who are Canadian songwriters and music publishers and of those affiliated performing rights societies from around the world. The board has purchased a license for the public.

**8.2 Uses covered by SOCAN and Re:Sound**

Examples of musical uses covered by the SOCAN and Re:Sound School Board Licence Agreement are as follows:

- 8.2.1 school dances (put on by the school and held for the benefit of students);
- 8.2.2 background music in hallways and cafeterias; and,
- 8.2.3 music performed during after-hours performances by students, which may have a target audience of other students, staff and parents/guardians.

**8.3 Uses not covered by SOCAN and Re:Sound**

Examples of musical uses that are not covered by the SOCAN and Re:Sound School Board Licence Agreement:

- 8.3.1 music that is part of a theatrical performance (e.g. a production of "My Fair Lady" where tickets are sold to the public);
- 8.3.2 music performed in activities held in school facilities that are rented or provided free of charge to outside groups, outside of the normal classroom curriculum; or,
- 8.3.3 concerts held at the school (whether admission is charged or not) that are held outside of regular school hours and where the performers are generally **not** students of that school.

**9. Streamed Learning Resources**

The SCDSB subscribes to various online education tools for students and staff. For information on the resources and programs available visit the StaffWeb under [Teaching and Learning>Learn@Home>Digital Tools](#).

**10. Other Subscription Services**

Showing movies from subscription services (e.g. Netflix, iTunes or other online movie subscription services) in the classroom is governed by the terms of the agreement between the subscriber and the subscription service. If the agreement provides that use is limited to personal or household use, for example, then classroom use is not permitted under the agreement. Staff may not copy a movie at home and then show that copy in the classroom.

**11. Student Work**

Any original work created by a student, be it in the form of an essay, a video or DVD, a sound recording, website, or art work is protected by copyright. The student, or if the student is a minor, the student's parent/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.

**12. Board as Copyright Holder**

Copyright affects how employees of the board publish documents, and make them available to other institutions, etc. The SCDSB, as the employer, retains copyright for works created by an employee, in the course of their employment. APM A2000 – Intellectual Property Rights, sets out an approval process for the distribution and use of board copyright-protected work.

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