

# Copyright, Fair Dealing, and the Classroom

## What Teachers Can and Cannot Do



# About this presentation



This presentation:

1. explains how to use the *Fair Dealing Guidelines* in schools;
2. describes the copyright responsibilities of school principals, teachers, and staff;
3. describes how to comply with copyright law.



# Copyright in schools has *changed*

You need to know that:

- the *Copyright Act* was amended by Parliament in June 2012, and a Supreme Court decision respecting “fair dealing” was made in July 2012; and
- teachers and students now have new rights and obligations under copyright law and the “fair dealing” provision.



# The important caveat

- If you infringe copyright, you, your school, and your school board can be held responsible for damages.

## Copyright Law has Changed for Teachers and Schools

New copyright rules allow teachers more latitude to incorporate a variety of new materials into their class lessons. But there are limits. Teachers must know the ***Fair Dealing Guidelines***.

***Know your rights – Know your limits***  
Learn more at: [www.cmec.ca/copyrightinfo](http://www.cmec.ca/copyrightinfo).



# “Fair dealing” and the classroom

- Did you know that “fair dealing” allows teachers to incorporate short excerpts from copyright-protected works into their class lessons?
- Did you know that “short excerpts” can be taken from resources such as books, movies, and CDs for your students?



# The fair dealing provision (1)

- The fair dealing provision in the *Copyright Act* permits use of a copyright-protected work without permission from the copyright owner or payment of copyright royalties, provided the dealing is “fair.”
- New amendments to the *Copyright Act* made “education” a fair-dealing purpose.
- A Supreme Court decision clarified that teachers can copy or communicate “short excerpts” from a copyright-protected work for students in their classrooms.



## The fair dealing provision (2)

- It permits the use of “short excerpts” for educational purposes – as clarified by the Supreme Court.
- “Short excerpts” are described in the *Fair Dealing Guidelines*.



# What “fair dealing” is not

- Fair dealing does not mean that a teacher can make unlimited use of any copyright-protected work without permission or payment.





# Guidelines now established

The Canadian Teachers' Federation, the Canadian School Boards Association, and the Council of Ministers of Education, Canada (CMEC), have developed and implemented guidelines to:

- explain what teachers may do without copyright permission; and
- clarify when permission is needed to use a copyright-protected work in their classrooms.



# *Fair Dealing Guidelines (1)*

1. Teachers, instructors, professors, and staff members 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.



## *Fair Dealing Guidelines (2)*

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.



## *Fair Dealing Guidelines (3)*

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
  - 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 a school or postsecondary educational institution;
  - c) as part of a course pack.



## *Fair Dealing Guidelines (4.1)*

4. A short excerpt means:

- a) up to 10 per cent of a copyright-protected work including a literary work, musical score, sound recording, and an audiovisual work);
- b) one chapter from a book;
- c) a single article from a periodical;



## *Fair Dealing Guidelines (4.2)*

4. A short excerpt means:
- 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.



## *Fair Dealing Guidelines (5)*

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.



## *Fair Dealing Guidelines (6)*

6. Copying or communicating that exceeds the limits in these *Fair Dealing Guidelines* may be referred to a supervisor or other person designated by the educational institution for evaluation. An evaluation of whether the proposed copying or communication is permitted under fair dealing will be made based on all relevant circumstances.





## *Fair Dealing Guidelines (7)*

7. 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.



# A “safe harbour”

The *Fair Dealing Guidelines* describe a “safe harbour” — uses within the *Fair Dealing Guidelines* limits that can, in the opinion of legal counsel, be defended as fair dealing.



# Beyond the limits...

Any use of copyright-protected works beyond the limits of the *Fair Dealing Guidelines* — outside the “safe harbour” — requires an evaluation of whether the proposed use requires copyright permission.



# What needs to be done? (1)


- The *Fair Dealing Guidelines* need to be incorporated into school practices.
- Teachers and students need to be aware of and follow the *Fair Dealing Guidelines*.
- Teachers should refer to the on-line copyright tool: [www.copyrightdecisiontool.ca](http://www.copyrightdecisiontool.ca)



# What needs to be done? (2)

- The *Fair Dealing Guidelines* should be posted in schools next to copying equipment, such as printing stations, photocopiers, and scanners.

## Fair Dealing



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, and 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 2012, the Supreme Court of Canada provided guidance as to what this test means in schools and postsecondary educational institutions.

These guidelines apply to fair dealing in non-profit K-12 schools and postsecondary educational institutions and provide 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 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.
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.
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
  - 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 a school or postsecondary educational institution;
  - c) as part of a course pack.
4. A short excerpt means:
  - a) up to 10 per cent of a copyright-protected work (including a literary work, musical score, sound recording, and an audiovisual work);
  - b) one chapter from a book;
  - c) a single article from a periodical;
  - d) an entire artistic work (including a painting, print, photograph, diagram, drawing, map, chart, and plan) from a copyright-protected work containing other artistic works;
  - e) an entire newspaper article or page;
  - f) an entire single poem or musical score from a copyright-protected work containing other poems or musical scores;
  - g) an entire entry from an encyclopedia, annotated bibliography, dictionary, or similar reference work.
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 these *Fair Dealing Guidelines* may be referred to a supervisor or other person designated by the educational institution 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 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.

[Copyrightdecisiontool.ca](http://Copyrightdecisiontool.ca) 





# Additional users' rights (1)

- In addition to fair dealing, the *Copyright Act* provides additional rights to teachers and students to use copyright-protected works for educational purposes without permission and without paying a copyright royalty.
- The greatest change to the law as a result of the amended *Copyright Act* is the right to use “publicly available” Internet materials for educational purposes.



## Additional users' rights (2)

- “Publicly available” materials are those posted on-line by content creators and copyright owners without any technological protection measures such as a password, encryption system, or similar technology intended to limit access or distribution, or without a clearly visible notice prohibiting educational use.
- There are other important changes to copyright law that teachers need to be aware of.



# Use of Internet materials (1)

- The Internet amendment in the copyright law permits teachers and students to access publicly available Internet materials in the process of teaching and learning.
- Routine classroom uses may be made of publicly available Internet materials, such as incorporating publicly available on-line text or images into homework assignments, performing music or plays on-line for peers, exchanging materials with teachers or peers, or reposting a work on a restricted-access course Web site.





## Use of Internet materials (2)

- The Internet amendment respects the rights of those creators and other copyright holders who post materials on-line for commercial purposes.
- Copyright owners can restrict use of their on-line materials by placing a clearly visible notice specifically prohibiting educational use.



# What else can teachers do?

The *Copyright Act* also permits teachers and students to:

- record news programs or news-commentary programs for later viewing by students;
- show audiovisual works in the classroom;
- use digital displays such as interactive whiteboards (subject to the commercial availability rule) in classrooms;
- record lessons to be made available for asynchronous viewing by students; and
- obtain an interlibrary loan copy of a copyright-protected work that the school library has made using digital technology.

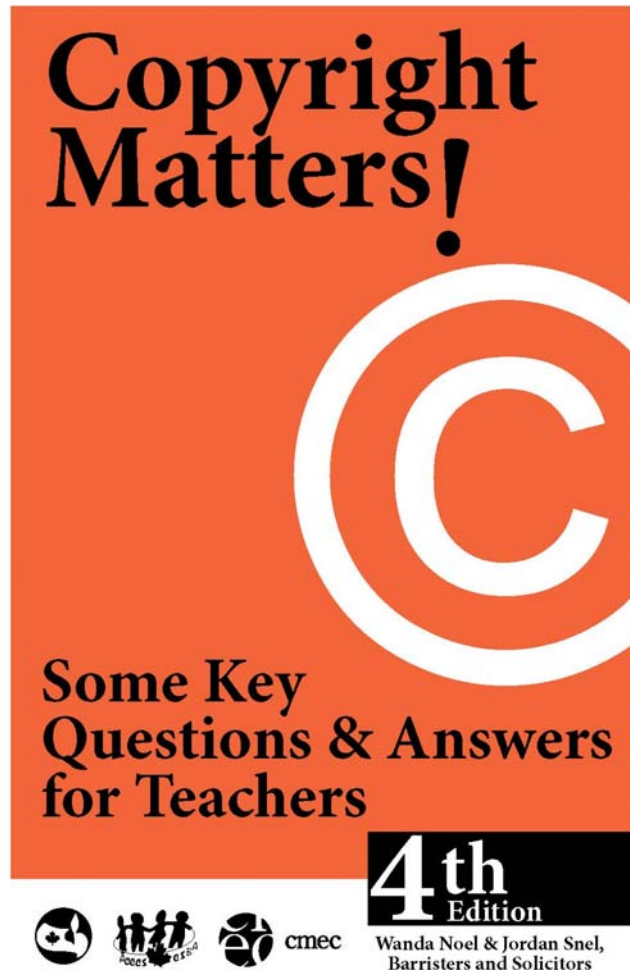


# Users' rights in *Copyright Matters!*

- Educational users' rights are fully described in the updated booklet, *Copyright Matters!*
- *Copyright Matters!* is a joint publication of the Canadian Teachers' Federation, the Canadian School Boards Association, and the Council of Ministers of Education, Canada (CMEC).
- *Copyright Matters!* provides teachers with user-friendly information on how copyright law relates to the use of resources on and off school premises.



# Copyright Matters!



This booklet is available from many sources, including

- [www.cmec.ca/copyrightinfo](http://www.cmec.ca/copyrightinfo)

It can be downloaded in English and French for free.



# Copyright permission may be required

- If permission from the copyright owner is required, school principals, teachers, and school-board staff are responsible for obtaining it.
- A process for obtaining permission and paying a transaction fee needs to be followed if the use does not fall within the *Fair Dealing Guidelines* or a users' right described in *Copyright Matters!*



# When permission is required

- When an intended use of a copyright-protected work falls outside the *Fair Dealing Guidelines* or a users' right in the *Copyright Act*, prior written permission from the copyright owner or copyright collective, and a transaction fee may be required.
- In these instances, teachers should consult the school principal or a designated staff person at the school-board office to assess whether permission is needed and obtain permission if necessary.
- If this process has not been followed, there is a risk that the use is contrary to law, and to proceed with the planned use is copyright infringement.



# Steps to obtain copyright permission

1. Determine if the school, school board, or ministry/department has a licence to use the copyright-protected work.
2. If the school, school board, or ministry/department does not have a licence, consult the *Fair Dealing Guidelines* to determine whether the use is permitted under fair dealing.
3. If the use is not permitted under fair dealing, determine whether any other users' right in the *Copyright Act* permits the use (refer to *Copyright Matters!* ).
4. If the use is not permitted under a users' right in the *Copyright Act*, permission to use the copyright-protected works is required.
5. If you are unable to get permission, you cannot use the work.



# Important take-aways

- The *Fair Dealing Guidelines* need to be incorporated into school practices.
- All teachers should access [www.copyrightdecisiontool.ca](http://www.copyrightdecisiontool.ca)
- All teachers should have a copy of *Copyright Matters!*
- A process for obtaining copyright permission is necessary and needs to be followed.





# Copyright compliance



Principals AND teachers  
are responsible for  
copyright compliance.



# A principal's responsibility (1)

1. Review copyright responsibilities with teachers and staff at least once a year.
2. Post the *Fair Dealing Guidelines* and the poster prohibiting the copying of consumables near all school photocopiers, scanners, printing stations, and other devices used to reproduce copyright-protected material.



## A principal's responsibility (2)

3. Provide teachers and staff with copies of the *Fair Dealing Guidelines* and *Copyright Matters!*
4. Seek school-board or ministry/department guidance when it is not clear whether copyright permission is required.



# A teacher's responsibility

1. Set an example of respect for copyright for your students.
2. Know and respect the limits of the *Fair Dealing Guidelines*.
3. Know your rights and obligations under copyright law.
4. Know the procedure for seeking copyright advice and obtaining permission.



# Key information is on-line

There is a copyright presentation especially developed for teachers at:

[www.copyrightdecisiontool.ca](http://www.copyrightdecisiontool.ca)



# Questions/Discussion

While teachers can use copyright-protected materials in their lessons, they must know the law and comply with the *Fair Dealing Guidelines*.

