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## Fair Dealing Policy

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<b>Policy Sponsor:</b>	Office of the Vice President Academic
<b>Policy Contact:</b>	Copyright Officer
<b>Policy Number:</b>	N/A
<b>Effective Date:</b>	January 11, 2013
<b>Approval Group:</b>	The Governors of Athabasca University
<b>Approval Date:</b>	January 11, 2013
<b>Review Date:</b>	This policy should be reviewed annually.
<b>Procedure:</b>	<a href="#">Fair Dealing Procedure</a>

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### Purpose

The purpose of this policy is to provide guidelines for the application of *fair dealing* at Athabasca University (AU) to ensure compliance with Canadian copyright law, and to provide a reasonable framework for AU to cope with the latitude inherent in determining fair dealing.

This Policy is intended to apply to the reproduction and distribution of otherwise unlicensed third-party works in any and all media (extant or future) by members of the AU community.

### Definitions

<b>Term</b>	<b>Definition</b>
<b>Copyright</b>	"the sole right to produce or reproduce a work or any substantial part thereof in any material form, to perform the work or any substantial part thereof in public, or, if the work is unpublished, to publish the work or any substantial part thereof." [1]
<b>Fair dealing</b>	an exception in the Canadian Copyright Act - what the Supreme Court of Canada calls a "user's right" - to, within limits, reproduce copyrighted



works without permission or payment for the purposes of research, private study, criticism, review and news reporting.

## **Copy**

any reproduction of materials that is made by or as a consequence of any of the following activities:

- a) reproducing by a reprographic process including reproduction by photocopying and xerography;
- b) scanning a paper copy to make a Digital Copy;
- c) printing a Digital Copy;
- d) transmission by electronic mail;
- e) transmission by facsimile;
- f) storage of a Digital Copy on a local storage device or medium;
- g) posting or uploading a Digital Copy to a Secure Network or storing a Digital Copy on a Secure Network;
- h) transmitting a Digital Copy from a Secure Network and storing it on a local storage device or medium;" [2]

## **User**

a member of the AU community (staff, student or faculty) seeking to reproduce copyrighted material in the spirit of fair dealing for purposes of research, teaching or service.

## **Policy Statements**

### **1. Fair Dealing**

Athabasca University observes and promotes the practice of fair dealing, according to the provisions established by the *Copyright Act* and the precedent established by the Supreme Court of Canada's (SCC) decision in the 2004 case *CCH Canadian Ltd. v. Law Society of Upper Canada*. The relevant clauses of that decision can be found in [Appendix 1](#).

### **2. Determining Fairness**

In evaluating the applicability of the principle of *fair dealing* to individual reproduction of copyrighted materials, users will adhere to the framework established by the SCC, which identifies six factors to guide users in assessing fair dealing:

(1) the purpose of the reproduction;



- (2) the character of the reproduction;
- (3) the amount of the reproduction;
- (4) alternatives to the reproduction;
- (5) the nature of the work; and
- (6) the effect of the reproduction on the work.

*(CCH Canadian Ltd. v. Law Society of Upper Canada s.52-53)*

Athabasca University advises staff, students, and faculty to become familiar with the basics of copyright law (see CAUT Guidelines and "Understanding Copyright") and the provisions of fair dealing, when deciding whether and how to copy published works. For clarification of whether a given case constitutes fair dealing, contact the Athabasca University Copyright Office at [copyright@athabascau.ca](mailto:copyright@athabascau.ca).

### **Applicable Legislation and Regulations**

*Copyright Act* R.S.C., 1985, c. C-42.

### **Related References, Policies, Procedures and Forms**

#### **Procedures**

##### [Athabasca University Fair Dealing Procedure](#)

See CAUT guidelines for examples of the six factors used to assess fair dealing.

#### **References**

*AUCC Fair Dealing Policy*. AUCC. Mar. 2011 <http://www.scribd.com/doc/59897856/AUCC-Final-Fair-Dealing-Policy-revised-March-2011>

*CAUT Guidelines for the use of Copyrighted Material*. CAUT / ACPPU, 2013  
[http://www.caut.ca/docs/default-source/copyright/revised-caut-guidelines-for-the-use-of-copyrighted-material-\(feb-2013\).pdf](http://www.caut.ca/docs/default-source/copyright/revised-caut-guidelines-for-the-use-of-copyrighted-material-(feb-2013).pdf)

*CCH Canadian Ltd. v. Law Society of Upper Canada*, 2004 SCC 13, [2004] 1 S.C.R. 339  
<http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2125/index.do>

Federation of Law Societies of Canada and Canadian Legal Information Institute. "Factum of the Intervenors." <http://www.flsc.ca/documents/Factum-re-SOCAN-August-2011-C-1.pdf>



## History

The Governors of Athabasca University, Motion # 180-15, January 11, 2013 (Approved)

### **APPENDIX 1**

*CCH Canadian Ltd. v. Law Society of Upper Canada (2004)* states

Under s. 29 of the *Copyright Act*, fair dealing for the purpose of research or private study does not infringe copyright. "Research" must be given a large and liberal interpretation in order to ensure that users' rights are not unduly constrained, and is not limited to non-commercial or private contexts. Lawyers carrying on the business of law for profit are conducting research within the meaning of s. 29. The following factors help determine whether a dealing is fair: the purpose of the dealing, the character of the dealing, the amount of the dealing, the nature of the work, available alternatives to the dealing, and the effect of the dealing on the work. (*CCH Canadian Ltd. v. Law Society of Upper Canada* ¶4)

Following the CCH case, more recent cases about fair dealing for research have asserted a "large and liberal interpretation" of *both* research *and* fair dealing: "The concept of fair dealing cannot be defined by rigid rules or delineated by bright lines but instead 'should be interpreted liberally'" (Federation of Law Societies, "Factum").

Furthermore, as per sec. 30 of the Copyright Act,

It is not an infringement of copyright for a library, archive or museum or a person acting under its authority to do anything on behalf of any person that the person may do personally under section 29 or 29.1

[1] Intellectual Property Institute of Canada <http://www.ipic.ca/english/general/copyright.cfm>. Retrieved December 7, 2011.

[2] Doyle, Devin Osler, Hoskin & Harcourt LLP. Email dated November 3, 2011 addressed to Troy Tait.