
Fair Dealing Procedure

Policy Sponsor:	Provost and Vice President Academic
Name of Parent Policy:	Fair Dealing Policy
Policy Contact:	Copyright Officer
Procedure Contact:	Copyright Officer
Effective Date of Procedures:	January 11, 2013
Review Date:	Annually

Purpose

The purpose of these procedures is to provide guidance to members of the university community on how to apply Athabasca University's (AU) Fair Dealing Policy.

Definitions

Term	Definition
Copyright	"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part thereof in any material form, to perform the work or any substantial part thereof in public, or, if the work is unpublished, to publish the work or any substantial part thereof."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]
Fair dealing	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.

Procedure

Step One

Complete a *fair dealing* assessment to determine if your planned reproduction of a work would be considered as *fair dealing* by referring to the six-factor framework as established by the Supreme Court of Canada. Use the chart at <http://cldd.athabascau.ca/services/copyright.php> to guide and document your conclusions.

1. The purpose of the reproduction

The intended use of the work must be for the purposes of research, private study, criticism, review or news reporting in order for *fair dealing* to apply. Reproducing a work for entertainment purposes is less likely to be fair.

2. The character of the reproduction

Character refers to the number of copies of a work being made as well as to existing custom and practice. Systematic cumulative copying is less likely to be fair than making a single copy of a work. The existing custom and practice refers to how academics in a postsecondary environment normally reproduce and distribute work fairly. Placing a reading on library reserve is an example.

3. The amount of the reproduction

This refers to the amount of a complete work that is going to be reproduced. Short quotes and passages can be freely reproduced without rights holder permission as long as they are properly



cited. Copying an entire work for research purposes is likely to be fair. Copying entire works for widespread distribution is less likely to be fair.

4. Alternatives to the reproduction

This factor examines if the planned reproduction is reasonably necessary to achieve the purpose. Determine if there are any suitable non-copyrighted alternatives to the work available. Investigate possible Open Access or open educational resources (OER), public domain or institutionally licensed works (e.g., through the library) that may be suitable replacements.

5. The nature of the work

The nature of a work refers to the status of the work - whether it has been published and whether it contains confidential or privileged content. Reproducing a portion of a published text is more likely to be considered fair than reproducing a confidential memo or email.

6. The effect of the reproduction on the work

The effect of the reproduction refers to the economic consequences to the rights holder that may result from reproducing the work. Making numerous copies of a commercially available work would have a greater economic impact and may be considered less fair than making a single copy of a work.

Step Two

If you are unsure about how to interpret any of these factors in your particular case, contact the Copyright Office for assistance in determining if a planned reproduction of a work may be considered as fair dealing. Send your questions to copyright@athabascau.ca

Step Three

If *fair dealing* applies, proceed with your reproduction as per the decision above.

Step Four

If *fair dealing* does not apply, seek permission for your intended use through the Copyright Office or use the form available from <http://cldd.athabascau.ca/course-development/forms.php>

Applicable Legislation and Regulations

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

Related References, Policies, Procedures and Forms

[Athabasca University Fair Dealing Policy](#)

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



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.lexum.org/en/2004/2004scc13/2004scc13.html>

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 (Associated policy approved)

[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.