Cambrian College — Fair Dealing Guidelines

I. Overview

The Supreme Court of Canada recognized in *CCH Canadian Ltd. v. Law Society of Upper Canada*, 2004 SCC 13, that “fair dealing” is a “user’s right”. This “right” is not simply a defence to copyright infringement, but rather excuses certain uses of copyright protected works. Such rights must, however, also be balanced with the interests of copyright owners.

The following “Fair Dealing Guidelines” identify the types of copying activity that the College believes are likely to be considered fair dealing in most contexts. In the College’s view, these Guidelines provide reasonable safeguards for the owners of copyright-protected works in accordance with the *Copyright Act* and decisions of the Supreme Court of Canada.

The College acknowledges that there may be cases in which a dealing is not captured by these Fair Dealing Guidelines, but may nevertheless be “fair” (the first assumption should be, however, that copying is not fair dealing and, thereby, could be copyright infringement). In such circumstances perceived to be “fair”, additional guidance may be required from a knowledgeable expert. For questions regarding copyright and fair dealing, consult the Librarian at extension 7333. Questions specific to course packs may be directed to Ancillary Business Operations at extension 6878.

The Fair Dealing Guidelines assume the following:

1. The matter sought to be copied is copyright protected;
2. No license covers the use of the work;
3. There is no other specific exception to excuse the copying activity; and
4. The proposed copy will be a “substantial part” of the work.

For more information about whether the proposed copying activity would fall under the Fair Dealing exception, or be otherwise excused without need for permission from or payment to the copyright owner, please consult the document “Cambrian College — Copying Guidelines”.

II. The Fair Dealing Guidelines

1. Teachers, instructors, professors and staff members, as well as other College staff supporting the educational activity, may communicate and reproduce, in paper or electronic form, short excerpts from a copyright-protected work for one of the allowable fair dealing purposes identified at Sections 29, 29.1, or 29.2 of the *Copyright Act*, RSC 1985, c C-42.
Those allowable fair dealing purposes are:

(a) Research;
(b) Private study;
(c) Education;
(d) Satire;
(e) Parody;
(f) Criticism*;
(g) Review*;
(h) News reporting*.

*Where the purpose of the dealing is criticism, review, or news reporting, the following must also be mentioned:

(a) The source; and
(b) If given in the source, the name of the author (if a work), performer (if a performance), maker (if a sound recording), or broadcaster (if a communication signal)

2. For the purposes of the Fair Dealing Guidelines, 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, provided the chapter constitutes no more than 20% of that 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.
(h) A single short story, play, essay, or article from a work containing other short stories, plays, essays, or articles.

As a general rule, the Short Excerpt must contain no more of the work than is required to achieve the allowable fair dealing purpose.

3. Copying or communicating multiple Short Excerpts from the same work, with the intention of copying or communicating substantially the entire work, is prohibited.

4. A single copy of a Short Excerpt 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 post-secondary educational institution;
(c) as part of a course pack provided to students at cost.

5. Course packs must be submitted through the Ancillary Business Operations review process. Course packs which are not provided to students at cost are excluded from the application of these Fair Dealing Guidelines.

6. Copying or communicating that exceeds the limits in this Fair Dealing Guideline may be referred to a supervisor or other person designated by the College 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 College for copying or communicating a Short Excerpt must be intended to cover only the College’s costs incurred in communicating or copying that Short Excerpt, including overhead costs.