

AVON MAITLAND DISTRICT SCHOOL BOARD

ADMINISTRATIVE PROCEDURE

NO. 190

SUBJECT: COPYRIGHT

Legal References: *Ministry of Education Policy/Program Memorandum 157: Use of Copyright-Protected Works for Education; Canadian Copyright Act as updated by Copyright Modernization Act; Fair Dealing Guidelines - Council of Ministers of Education Canada (CMEC) Copyright Consortium*

Related References: *Administrative Procedure 140 Technology: Responsible Use and Security*

1. Copyright Protection

- 1.1 Copyright exists to protect the interests of the creator of any intellectual work. This gives the creator control over how it is copied or used.
- 1.2 In Canada, it is important to assume that all works are copyrighted (according to the Berne Convention). All learning resources are governed by copyright law.
- 1.3 The updated *Copyright Act* adds "education" as an allowable purpose within the fair-dealing provision.
- 1.4 The Avon Maitland District School Board complies with the Fair Dealing Guidelines as developed by the Council of Ministers of Education Canada (CMEC) Copyright Consortium.
- 1.5 This administrative procedure outlines the annual responsibilities of the principal and members of staff in this area in order to ensure that all staff understand the obligations of the school board in accordance with the *Copyright Modernization Act*.
- 1.6 A regional supervisory official or designate will oversee the maintenance of licensing agreements that apply across Avon Maitland District School Board.

2. Fair Dealing Guidelines

- 2.1 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, two tests must be passed.
- 2.2 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.
- 2.3 The second test is that 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.
- 2.4 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.

3. Copyright Application

- 3.1 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.
- 3.2 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.
- 3.3 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;
 - c) otherwise restricted to students of a school or post-secondary educational institution; or
 - d) as part of a course pack.
- 3.4 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;
 - 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; or
 - g) an entire entry from an encyclopedia, annotated bibliography, dictionary or similar reference work.
- 3.5 There is a prohibition on the copying of consumables. A consumable is any workbook-styled published document intended to be used one time.
- 3.6 Current information provided about exemptions must be posted near each photocopier.
- 3.7 Further information and answers to various questions on copyrighting can be accessed via the new online tool "Copyright Decision Tool" found at <http://www.fairdealingdecisiontool.ca/DecisionTool/>.
- 3.8 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.

- 3.9 Copying or communicating that exceeds the limits in these Fair Dealing Guidelines may be referred to a regional supervisory official or designate for evaluation. An evaluation of whether the proposed copying or communication is permitted under fair dealing will be made based on all relevant circumstances.
- 3.10 Any fee charged by the individual school and/or board 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.

4. Procedures for Electronic Media

- 4.1 The principal and teachers are responsible for the proper use of media software and copyright material within the individual school. Proper use means that the law and administrative procedures must be respected.
- 4.2 The principal shall review, annually, the Director of Education's administrative procedure with all users.
- 4.3 Teachers shall not promote, condone or allow students to make illegal use of media software or any material subject to copyright laws.
- 4.4 All employees shall use software in accordance with the conditions (license) established for its use (i.e., one school only, one machine only, several machines, etc.).
- 4.5 All employees shall refrain from using any software other than that which has been obtained through proper procedures as outlined in Administrative Procedure 140 Technology: Responsible Use and Security (board or school purchase and/or license).
- 4.6 Principals are to ensure that a copy of invoices and/or proof of purchase is filed for future retrieval. Program media, manuals, actual paper licenses, etc. may also serve as "proof of purchase".
- 4.7 Computer networks may require a special version of a software program, which is network licensed.
- 4.8 Audio-visual works can be "performed" (i.e., shown) in the classroom under the updated *Copyright Act* requirements. Outside the classroom or before/after regular classroom school hours, such audio-visual works shown in their entirety must have been purchased with a public performance license. However, up to 10% of a copyright-protected audiovisual work may be shown in compliance with the updated *Copyright Act* legislation.
- 4.9 Commercially produced music or graphics (images) must be assumed to be copyright protected. Use of these media in schools by staff or students may only occur if written permission from the copyright holder has been obtained in advance, unless use is a short excerpt only, as outlined in Section 3.4 above.
- 4.10 Teachers and students may use publicly-available Internet Materials (information, images and sound files) for their routine classroom learning activities and educational pursuits, such as downloading, saving and sharing. Web based information used by staff or students should note proper citation of the source in the same way using print materials would be credited. Copying information from the Internet without written

- permission is a breach of copyright under Canadian law.
- 4.11 Courses of study in the intermediate and senior divisions which require students to assemble and reproduce research materials and documentation shall include discussion with students on such topics as the ethical and practical problems associated with copyright infringement, plagiarism, etc. so that students are made aware of the general requirements of the updated *Copyright Act*.
- 4.12 Written permission from authors and/or copyright holders shall be obtained prior to the reproduction of materials, in their entirety, which are covered by copyright, save and except items noted in Section 3.4 above. Staff members of Avon Maitland District School Board must be made aware that the district does not condone the illegal reproduction of copyrighted materials, and therefore will not provide legal insurance or protection to those who are charged with copyright violations.
- 4.13 Media Centre(s)
An appropriate learning resources library to support licensed programs will be maintained at the Media Centre.
- 4.14 Resources
- 4.14.1 In the event that after this Administrative Procedure has been reviewed and there are still outstanding questions regarding copyright, the staff member should inquire with the principal before possible copyright infringement. If additional assistance is still required, inquiries should be directed to the Superintendent of Program by the principal.
- 4.14.2 Appendix A - Copyright Procedure
- 4.14.3 Appendix B - Copyright FAQs

COPYRIGHT PROCEDURE

PREPARED FOR AVON MAITLAND DISTRICT SCHOOL BOARD

By Lesley Ellen Harris Copyright & New Media Lawyer <http://copyrightlaws.com>

May 1, 1998

1.0 Introduction

The purpose of this Procedure is to provide a summary of Canadian copyright law particularly as it relates to electronic courses. This Procedure is necessary because copyright laws are not always straightforward and because the application of copyright laws can be frustrating.

This Procedure is not intended to act as a substitute for legal advice and proper legal advice should be obtained when necessary.

2.0 What is a Copyright?

Copyright means the right to copy. A copyright owner has a bundle of sole and exclusive rights in his or her original works such as the right to reproduce (e.g., photocopying, scanning/digitizing), publish, adapt, and perform in public and broadcast. Permission must be obtained from the copyright holder to use one or more of his or her exclusive rights. However, copyright permission need not be obtained to consult, read or borrow photographs or literary works (for example, books, pamphlets, manuscripts, letters and other written documents).

3.0 What is protected by Copyright? For How Long?

Copyright protects books, magazines, photos, diagrams, sound recordings, movies, television shows, artworks, graphic designs, and computer software, amongst other things. Copyright protects the expression of ideas in these and other forms.

In general, copyright lasts for the life of the creator plus fifty years. There are exceptions to this general rule, for instance, for Crown works. After the duration of copyright has expired, the item is said to be in the public domain and it may be copied freely without the need for permission.

Note that copyright is based on the life of the creator - the creator may not necessarily be the current copyright owner. While the creator is always the first copyright owner, copyrights can be sold or transferred, but the copyright term still lasts for the life of the author plus fifty years. (For more information on determining exactly who owns copyright, see section 8.0 below.)

4.0 Limitations and Exceptions

Anything less than a "substantial part" of a work may be copied without authorization. This concept is not defined in the *Copyright Act*. Court cases have looked at its meaning and will take into account at least the following two factors when determining the meaning of a substantial part. First, the court will examine the quantity of the work, that is, how much of the original work has been copied. Second, the Court will examine the quality of the work, that is, was the portion copied qualitatively a substantial portion of the original work.

Even the reproduction of a small portion, which is an "important" part of it, may be considered a substantial part of a work. In one case, twenty-eight bars of a song (which equaled twenty seconds of a four-minute song) were played. These twenty-eight bars were held to "contain... the principal air of the 'Colonel Bogey' march, the air which everyone who heard the march played through would recognize as being the essential air of the 'Colonel Bogey' march." In each situation, you must ask yourself whether the part of the work being copied is qualitatively and quantitatively a substantial part of the work. If you are reproducing a substantial part of a

work, there are very few circumstances in terms of creating online course materials under which you can use the work without first obtaining permission from the copyright holder. You may be able to use quotes, however beyond that, many would use the rule of thumb of obtaining permission.

You can obtain permission to use a copyright work directly from the copyright holder or from his or her representative -- an agent, publisher, lawyer or copyright collective (an association of copyright holders who jointly collect copyright payments, for example, CANCOPY.) In certain circumstances, if you make reasonable efforts to locate a copyright holder and are unsuccessful, the Copyright Board may issue you a license to reproduce the copyright work in question.

The Copyright Office (part of the Canadian Intellectual Property Office) does not directly assist in obtaining copyright permission. The Copyright Office is a place where copyright holders may voluntarily register their works and transfers of ownership in their works. These records are open to the public. Since registration is voluntary in Canada, these records are not complete and may only be one stage of a multistage process to locate a copyright holder.

5.0 Clearing Copyright in Canadian Works

Whenever a "substantial" portion or the whole of a copyright work is reproduced, you must obtain permission (often for a fee) in advance from the copyright holder. This is true even if the reproduction is for non-profit, non-commercial or educational, library or archival uses, and for electronic or online uses of materials. Therefore, when preparing print or electronic course materials, you need to obtain permission to use those materials in most, if not all, circumstances.

6.0 Clearing Copyright in Foreign Works

In Canada, foreign works are protected under Canadian copyright laws. This means that you should follow the same procedure when using Canadian, British, U.S., French copyright works, or works from any other country.

7.0 Determining Ownership

After deciding that permission to reproduce the material is needed, the next step is to determine who the copyright owner is and to contact that owner or his/her representatives. The copyright owner may not necessarily be the author of the text. Inside the front cover of every book or magazine is the copyright and publishing information for that text. In some cases, the publisher is the actual copyright-owner of the text. If you wish to reproduce materials from a magazine, the magazine may hold copyright to its articles but you should check the publishing information on the inside of the cover to be certain. Sometimes copyright will remain with the author of individual articles (i.e., in the case of freelance writers.)

Photographs, charts and other images may be credited to another source and thus the copyright owner will be different than the publisher of the text. Look in the back or front of the text for a listing of photo credits or something similar.

In the case of Websites, the copyright-owner of material on the site is often the owner of the Website itself. However, that person may have reproduced images or text from other sources, with or without permission. You must obtain permission from the original source. Ask the Website owner for his or her source for the material and contact that source.

8.0 How Do I Obtain Copyright Permission?

Permission to reproduce copyright materials must be obtained before any copyright materials can be used in course materials. It is always prudent to obtain permission in writing. Since it

takes time to obtain permission and to forward any payments, requests for permission should be made at least six weeks before they are needed in the classroom or on a Website, and earlier if possible.

8.1 Contacting the Owner

For print uses, Cancopy can be a tremendous help. For online courses, Cancopy may also be of help either in aiding you to obtain permission or in providing you with contact information on the copyright holder.

If Cancopy cannot give you permission then contact the copyright owner directly. Publishers' addresses may be found in any library or on the Web. Address any correspondence to the Permissions department. If an individual is the copyright owner and proves difficult to track down, then you can write that individual care of the publisher of the text.

8.2 What Information Do They Need?

The copyright owners or their representative will need the following information: (1) title of the source for the material (book, magazine, painting title, etc.); (2) creator/author of the item; (3) a description of the item you wish to reproduce-the title of the magazine article, title of a diagram or photo caption, chapter title, whatever is appropriate; (4) the page number(s) of the item (if appropriate); (5) the ISBN (in the case of a book) or ISSN number (in the case of a magazine); (6) year of publication (also include the month or season in the case of a magazine) and edition if applicable. This enables the copyright owner to identify exactly what it is you wish to reproduce.

Also include: (1) the purpose for which you wish to reproduce the item (research, commercial, educational, etc.); (2) whether the use is for profit or not; (3) how the item is to be reproduced (photocopied, re-typed, or scanned) and (4) where the item will appear (on a Website, in an online or print-based course). It is also important that you specify if the item is to be distributed mechanically (photocopied) or digitally (via a listserv or Website). In some cases, a copyright owner will grant permission for mechanical reproduction but will not grant the right to digitize it. You may want to create a standard permissions form with blank spaces for the above information.

8.3 After Obtaining Permission

Keep all written requests and responses on file, particularly any written agreements outlining the rights granted to you and any limitations on use. Also keep any records of payment of fees. Also, include a credit line or credit list for example: From Doe, Jane. My Life. Published by Anonymous Press, 19XX, 2nd edition, pp. 15-17. Reprinted by permission. Another example is: Photo of Hans Holbein's A Portrait of Henry VIII. Courtesy of National Portrait Gallery.

8.4 Unlocatable Copyright Owners

If you cannot locate the copyright owner, you may apply to the Copyright Board for a license. You must prove to the Board that you have exhausted every means to find the owner(s) and have failed. The Board may then issue a license and set any fees they deem applicable.

Even if you cannot find the copyright owners, you may not reproduce copyright material without permission from the Copyright Board.

9.0 Revision of Copyright Laws in Canada

Revision of Canada's copyright laws is an on-going process. It is important to be aware of

any changes, minor and major ones, to the Canadian *Copyright Act* as these changes may affect the copyright procedures set out in this Policy. The Canadian government is currently developing the policy for the next phase of copyright reform, which will deal with uses of copyright materials in a digital form.

The information in this Policy is accurate as of May 1, 1998.

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The Board may reproduce this Policy for staff, board and clients. This Policy may not be included in, or reproduced as part of any other document.

COPYRIGHT FAQs (FREQUENTLY ASKED QUESTIONS)**Q1: Are online courses automatically protected by copyright?**

Copyright protection is automatic in Canada. Once a work is in some tangible form, e.g., on paper, it is protected by copyright. There is no need to register the work at the Canadian Copyright Office, no need to deposit a copy of the work at any depository, and no need to mark the work with the copyright symbol. However, you can voluntarily register your work with the Copyright Office and there are certain advantages in doing so should you ever have to defend it.

Q2: Who owns an online course? Is it negotiated, or is it covered by the *Copyright Act*?

The author of the work is the first owner of the work. However, if the online course is prepared as part of an employee's or teacher's duties, then his or her employer would own the course, unless they have negotiated an agreement otherwise. If the course is a compilation of materials, the "compiler" or compiler's employer would own the rights, however the owner of each individual contribution would continue to own the rights in their respective works. Otherwise, ownership can be negotiated in any contract between author and school board, and other parties. Some collective agreements may cover copyright ownership.

Q3: Is it sufficient to cite the source of copyright protected works such as a graphic or a scanned photograph of a painting, or is it necessary to obtain permission?

When you use an entire copyright work, you usually must get permission to reproduce it. As well, you need to mention the author's name unless you have obtained a waiver to that effect.

Q4: Who is responsible for copyright infringement in distance education courses: the author who wrote the course; the publisher who keyed in the information; the principal who offers the course; the board who owns the course; the administrator responsible for distance education; or all of the above?

It is possible that all of the above could be named in a copyright suit, although some names may be deleted by a simple court procedure. Some precautions regarding liability are to have agreements between the various parties spelling out each party's responsibility with respect to copyright clearance.

Q5: If the board sets out clear guidelines to which all staff are aware, may the board still be responsible for infringement?

That would depend on many factors: for example, how the board makes certain that its staff is aware of what constitutes copyright infringement; what responsibility the board takes for ensuring that all copyright permissions are received before offering a course; what steps the board takes to ensure that there is no copyright infringement; if there is any agreement between staff and the board as to who is responsible for copyright. There are too many factors to give a definitive answer. Again, a clear agreement between staff and board as to responsibility for copyright and a board policy regarding copyright are important.

Q6: Is it legal for a Website to link to another Website?

Yes, it is probably legal, as you are not reproducing the materials on the other site, merely providing an address for a person to get there. As a matter of netiquette, you might ask permission of the Website owner before providing a link to his or her site.

Q7: Is it legal to link to a site that has illegal copies of the complete works of Margaret Atwood?

This may be a problem, especially if you are aware that the works are illegally posted. It is best not to link to such a site and to avoid any possible claim regarding contributory infringement of copyright.

Q8: Which country's copyright laws apply to the Internet?

No one country's laws apply to the Internet. The problem is one of jurisdiction. If there is a case of infringement over the Net, should it be pursued in the country where the infringing materials were produced? Distributed? Where the source material originated? No one answer has yet presented itself. Court cases have been pursued in the country where the infringing materials have been distributed, and also in the country where the source material originated.

Q9: What are the penalties for copyright infringement?

There are both civil and criminal penalties for copyright infringement. You could be asked to remove the infringing material. If the matter is pursued as a civil matter, you could be asked to pay the copyright owner an amount of money (compensatory and possibly punitive damages) the court feels is appropriate to compensate him or her for the violation. You would have to pay your own court costs and possibly those of the other party as well. If the matter is pursued as a criminal matter, you might face a fine and, in the extreme, jail time.

Q10: What exactly is in the public domain?

Generally, any work whose creator has been dead for fifty years or longer. One exception is government documents which enter into the public domain fifty years after their date of first publication. These same rules apply to works on the Internet.

Q11: Aren't government materials public domain anyway?

Not in Canada. U.S. government materials are public domain in the U.S. but are protected by copyright under Canadian copyright laws when they are used here.

Q12: My colleagues in the U.S. talk about "fair use" - do we have that here? Are there any exceptions for educational use?

Fair use exists under U.S. copyright law and allows, amongst other things, the reproduction of multiple copies of copyright materials for use in a classroom. Fair use does not apply in Canada even to U.S. materials when used in Canada. Canada has a fair dealing defense, however only very small portions of works can be copied under it. In addition, Canadian copyright law has exceptions for schools, libraries, archives and museums, though none of the exceptions specifically apply to online courses. Information on these exceptions is at <http://www.pch.gov.ca>.

Q13: I saw this great picture on someone else's Website -- can I use it?

Yes, if you obtain permission from the site owner and he or she has the right to grant permission, or if the site owner has included a statement saying that the item may be copied. The site owner may have copied the picture from elsewhere in which case you would have to go to the original source. Items found on the Web are not automatically in the public domain.