

COPYRIGHT ACT COMPLIANCE: FAIR DEALING GUIDELINES

(Approved by President, Tom Traves, January 2011, amended March 2011)

BACKGROUND

All members of the Dalhousie University community – faculty, staff and students – have an obligation to comply with the requirements of the *Copyright Act*

Under the *Copyright Act*, express permission of the copyright owner is required before making copies or distributing works, with some exceptions. These guidelines outline the framework for operating under one of these exceptions – “fair dealing” for the purposes of research, private study, review, criticism or news reporting. These guidelines outline the limits and requirements for making paper and electronic copies of a portion of a published work by individuals for their own use, and by libraries for interlibrary loans, for library reserves, and for the use of their patrons.

There are other exceptions for other circumstances relevant to the teaching and learning environment of the University such as the use of works on dry-erase boards or overhead projectors, the use of works for examinations or assignments, and the performance of works in a variety of educational settings. These guidelines do not cover such situations.

It is also important to note that these guidelines do not in any way limit the ability of individuals to use links to published works on a legally authorized website on their own websites or course management systems, or to make or distribute hard or electronic copies of published works in accordance with licenses granted to the University by publishers.

These guidelines are based upon the Fair Dealing Policy developed in cooperation with the Association of Universities and Colleges of Canada.

JURISDICTION

These guidelines apply to all members of the Dalhousie University community – faculty, staff and students.

NON-COMPLIANCE

Members of the University community who fail to comply with these guidelines may be denied access, in whole or in part, to resources that support the copying and distribution of published works, and in addition, may be subject to appropriate disciplinary action by reason of non-compliance with University policy.

GUIDELINES

I. Copying Guidelines

1. Except where otherwise stated, these guidelines apply to a university making a single copy from a work protected by copyright for the purposes of research, private study, review, criticism or news reporting in circumstances in which the consent of the owner of copyright has not been secured and is not required by reason of the fair dealing exception in the *Copyright Act*. Permission from a copyright holder may be required where the copy falls outside of these guidelines.
2. Single copies that are permitted to be made pursuant to these guidelines must be made only from publications in which copyright subsists, such as, books, journals and other periodical publications, newspapers and magazines ("Published Works"). A copy may only be made from a lawful copy of the work in the possession of the university, and if the lawful copy is in electronic form, there is no restriction against making a copy under the contractual terms relating to the Published Work.
3. No copying may exceed 10 per cent of a Published Work, other than a textbook produced primarily for the post secondary education market, or the following, whichever is greater:
 - (a) an entire chapter from a book provided that it does not exceed 20 per cent of the book;
 - (b) an entire article from a periodical publication;
 - (c) an entire short story, play, poem or essay from a book or periodical publication;
 - (d) an entire entry from an encyclopedia, dictionary, annotated bibliography or similar reference book;
 - (e) an entire reproduction of an artistic work from a book or periodical publication; and
 - (f) a single musical score from a book or periodical publication.
4. No copying may exceed 5 per cent of a textbook produced primarily for the post secondary education market, or the following, whichever is greater:
 - (a) an entire chapter from a textbook provided that it does not exceed 10 per cent of the textbook;
 - (b) an entire short story, play, poem or essay from the textbook provided that it does not exceed 10 per cent of the textbook; and
 - (c) an entire reproduction of an artistic work or a single musical score from the textbook provided that it does not exceed 10 per cent of the textbook.

5. Notwithstanding any of the other provisions of these guidelines, no copies may be made of the following:
 - (a) any of the works referred to in paragraphs 3(b) to 3(f) of these guidelines where the publication containing the work does not contain other works. For example, no copy may be made of a play from a publication containing the play but no other work;
 - (b) unpublished works, subject to the provisions of paragraph 10 below;
 - (c) proprietary workbooks, work cards, assignment sheets, tests and examination papers;
 - (d) instruction manuals;
 - (e) newsletters with restricted circulation intended to be restricted to a fee paying clientele; or
 - (f) business cases which are made available for purchase.
6. Each paper copy made pursuant to Parts II, III and IV of these guidelines shall contain, on at least one page, the name of the author or artist (where known), the title of the publication from which the copy was made, the name of the publisher of that publication and the following statement:

This copy is made solely for the use by a student, staff member or faculty member for research, private study, review or criticism. Any other use may be an infringement of copyright if done without securing the permission of the copyright owner.
7. Each electronic copy made pursuant to Parts II, III and IV of these guidelines shall have the information and statement referred to in paragraph 6 on at least one page, except for an electronic copy made available from a server pursuant to these guidelines, that information and statement could instead be associated with the copy such that notice of that information and statement would come to the attention of the person who accesses the copy.
8. If a fee is charged for making a copy, the fee is set at no more than an amount representing a reasonable approximation of the actual cost of making and delivering the copy.
9. University staff shall use reasonable efforts to guard against systematic, cumulative copying from the same work which in total exceeds the portion of the work that may be copied pursuant to these guidelines and to ensure that the number of copies made complies with these guidelines. If university staff suspects that a student, other staff member or faculty member is engaged in systematic, cumulative copying, the matter must be referred to the Copyright Officer or his or her delegate for review, and any further requests from that student, staff member or faculty member for a copy may be refused.
10. Requests for the making of copies which fall outside these copying guidelines and requests for making of copies of unpublished works may be

referred to the Copyright Officer or to his or her delegate for evaluation. A determination will be made as to whether the proposed copies are permissible in all the circumstances relating to the requests and may ultimately be refused. The evaluation will examine all relevant circumstances, including:

- (a) the purpose of the proposed copying, including whether it is for research, private study, review, criticism or news reporting;
- (b) the character of the proposed copying, including whether it involves single or multiple copies, and whether the copy is destroyed after it is used for its specific intended purpose;
- (c) the amount or proportion of the work which is proposed to be copied and the importance of that work;
- (d) alternatives to copying the work, including whether there is a non-copyrighted equivalent available;
- (e) the nature of the work, including whether it is published or unpublished; and
- (f) the effect of the copying on the work, including whether the copy will compete with the commercial market value of the original work.

II. Interlibrary Loan

11. This section on interlibrary loan applies to a loan from one university library in Canada at the request of another university library in Canada for delivery to that library or for transmission to a student, staff member or faculty member of that other university. These guidelines do not apply to a loan from a university library to a public or commercial library or to a library located outside of Canada. Depending on the circumstances surrounding the request for the loan, these guidelines may apply by analogy. Specific consideration of all the circumstances would have to be given to determine whether these guidelines would apply by analogy.¹

Paper Copies

12. A single copy may be made onto paper pursuant to the Copying Guidelines for interlibrary loan, subject to the following safeguards:
- (a) the library making the copy has previously received written confirmation in paper or electronic form from the library requesting the copy or from the patron of that library that the patron requires the copy for research, private

¹ These guidelines have been written to clarify fair dealing for access to university library resources. Fair dealing, of course, has wider application and is legitimately and reasonably called upon in other contexts and circumstances. While these particular guidelines do not specifically address all such circumstances it can, as noted in clause 11 of the guidelines, apply by analogy in certain situations. It is not unreasonable to expect for example that, subject to a consideration of the facts, fair dealing would apply in the context of an interlibrary loan request from a local public library to a university library.

study, review or criticism, and that the patron is a student, staff member or faculty member of the university requesting the copy;

- (b) where the patron requires the copy for review, criticism or news reporting, the library making the copy advises that, in using the copy for any of those purposes, the patron mentions:
 - (i) the source; and
 - (ii) if given in the source, the name of the author of the work;
- (c) where the purpose of making the paper copy is to use it to make an electronic copy for use in interlibrary loan, the paper copy is promptly destroyed after the electronic copy is made.

Electronic Copies

- 13. A single copy may be made in electronic form pursuant to the Copying Guidelines for interlibrary loan and may be transmitted to the library requesting the copy using Ariel or similar technology subject to the following safeguards:
 - (a) the library making the copy has received written confirmation in paper or electronic form from the library requesting the copy that the patron of that library requires the copy for research, private study, review, criticism, or news reporting, that the patron requiring the copy is a student, staff member or faculty member of the university requesting the copy, and that once that library received the electronic copy and makes a copy onto paper it will delete the electronic copy;
 - (b) where the patron requires the copy for review, criticism or news reporting, the library making the copy advises that, in using the copy for any of those purposes, the patron mentions:
 - (i) the source; and
 - (ii) if given in the source, the name of the author of the work.
 - (c) the library making the copy has received written acknowledgement from the library requesting the copy that it will only use the electronic copy transmitted to it for the purpose of making a copy onto paper for the patron of that library that required the copy and will delete the electronic copy once it has furnished the paper copy to its patron; and
 - (c) the Ariel or similar technology used to transmit the copy is set or configured so that the copy is deleted once the transmission is completed.
- 14. A single copy may be made in electronic form pursuant to the Copying Guidelines for interlibrary loan and may be transmitted to a patron of the library requesting the copy in electronic form by desktop delivery subject to the following safeguards:

- (a) the library making the copy has received written confirmation in paper or electronic form from the library requesting the copy that the patron of that library is a student, staff member or faculty member of the university requesting the copy;
- (b) where the patron requires the copy for review, criticism or news reporting, the library making the copy advises the patron of the library requesting the copy that, in using the copy of any of those purposes, the patron mentions:
 - (i) the source; and
 - (ii) if given in the source, the name of the author of the work;
- (c) the library making the copy has, before transmitting the copy, received written confirmation in paper or electronic form from the patron of the library requesting the copy that the patron requires the copy for research, private study, review, criticism, or news reporting that the patron will only use that copy for research, private study, review, criticism, or news reporting, and that the patron will not transmit the copy to any third party;
- (d) the electronic copy is made available to the patron requesting the copy either by email sent directly to the patron, or from a secure server protected by a technological protection measure that ensures that the copy is only made available to the patron requesting the copy;
- (e) the electronic copy is transmitted to the patron requesting the copy in PDF format or a similar format that restricts the copy from being altered by the patron; and
- (f) if transmitting the copy by email, the library deletes its sent email once the email has been transmitted, and if making the copy available from a secure server, the library deletes the copy stored on its server once the patron requesting the copy has downloaded one copy from the server and is not transmitted to another patron requesting a copy.

III. University Library Reserve

- 15. This section on library reserve applies to paper copies made by a staff or faculty member for library reserve.
- 16. One paper copy for each 30 students in a course of instruction up to a maximum of 3 may be made onto paper pursuant to the Copying Guidelines for library reserve subject to the following safeguards:
 - (a) the paper copies are made by or at the request of a faculty member in respect of a specific course of instruction offered by the university;
 - (b) the paper copies are made as an optional and supplementary source of information for students and must be a small proportion (less than 25 per

cent) of the required reading for a particular course, and the university library has received, from the faculty member requesting the copies, a written acknowledgement in paper or electronic form confirming that the copies are intended as an optional and supplementary source of information for students and that the copies amount to less than 25 per cent of the required reading for the course;

- (c) the use of library reserve must not substitute for the purchase of books, course packs or other published materials;
- (d) prior to loaning the paper copy to a student, the library receives from the student a written acknowledgement in paper or electronic form that he or she is a student enrolled in a course of instruction at the university, that the student requires the copy for research, private study, review or criticism, and that the student will not use the copy for any other purposes;
- (e) where the student requires the copy for review, criticism or news reporting, the library advises the student that, in using the copy for any of these purposes, the student mentions:
 - (i) the source; and
 - (ii) if given in the source, the name of the author of the work;
- (f) the paper copy is loaned to the student for a period of limited duration; and
- (g) the paper copy is destroyed within a reasonable time once the course of instruction or series of courses it pertains to comes to an end.

IV. Document Delivery

17. This section on document delivery applies to copies made by the university library from Published Works for a patron of the library.

Paper Copies

18. A single copy may be made onto paper pursuant to the Copying Guidelines for document delivery for a patron of the university library who is a student, staff member or faculty member of the university subject to the following safeguards:
- (a) the library has received written confirmation in paper or electronic form from the patron that is a student, staff member or faculty member of the university, and that the patron requires the copy for research, private study, review, criticism or news reporting;
 - (b) where the student requires the copy for review, criticism or news reporting, the library advises the student that, in using the copy for any of those purposes, the student mentions:
 - (i) the source; and

- (ii) if given in the source, the name of the author of the work.
 - (c) where the purpose of making the paper copy is to use it to make an electronic copy to provide to the patron, the paper copy is promptly destroyed after the electronic copy is made.
19. A single copy may be made onto paper pursuant to the Copying Guideline for document delivery, for a patron who is not a student, staff member or faculty member of the university subject to the following safeguards:
- (a) the library has permitted the patron to have access to its premises and the patron requests the copy while on the premises of the library;
 - (b) the library has received written confirmation in paper or electronic form from the patron that the patron requires the copy for research, private study, review, criticism or news reporting; and
 - (c) where the patron requires the copy for review, criticism or news reporting, the library advises the patron that, in using the copy for any of those purposes, the patron mentions:
 - (i) the source; and
 - (ii) if given in the source, the name of the author of the work.

Electronic Copies

20. A single copy may be made in electronic form pursuant to the Copying Guidelines for document delivery for a patron of the university library subject to the following safeguards:
- (a) the library has received written confirmation in paper or electronic form from the patron that the patron is a student, staff member or faculty member of the university, that the patron requires the copy for research, private study, review, criticism or news reporting, that the patron will only use that copy for research, private study, review, criticism, or news reporting, and that the patron will not transmit the copy to any third party;
 - (b) where the patron requires the copy for review, criticism or news reporting, the library advises the patron that, in using the copy for any of those purposes, the patron mentions:
 - (i) the source; and
 - (ii) if given in the source, the name of the author of the work;
 - (c) the electronic copy is made available to the patron requesting the copy either by email sent directly to the patron, or from a secure server protected by a technological protection measure that ensures that the copy is only made available to the patron requesting the copy;

- (d) the electronic copy is transmitted to the patron requesting the copy in PDF format or a similar format that restricts the copy from being altered by the patron; and
- (e) if transmitting the copy by email, the library deletes its sent email once the email has been transmitted, and if making the copy available from a secure server, the library deletes the copy stored on its server once the patron requesting the copy has downloaded one copy from the server.

V. Faculty Member Fair Dealing

21. This section on faculty fair dealing applies to paper and electronic copies made from Published Works by a faculty member, or by a staff member of the university for a faculty member.

Paper Copies

22. A single copy may be made by a faculty member pursuant to the Copying Guidelines, subject to the following safeguards:
- (a) the faculty member requires the copy for the faculty member's personal research, private study, review, criticism or news reporting; and
 - (b) where the faculty member uses the paper copy for review, criticism or news reporting, the faculty member mentions:
 - (i) the source; and
 - (ii) if given in the source, the name of the author of the work.
23. A single paper copy may be made by a staff member of the university for a faculty member pursuant to the Copying Guidelines, subject to the following safeguards:
- (a) the faculty member advises the staff member that the faculty member requires the copy for the faculty member's personal research, private study, review, criticism or news reporting;
 - (b) the faculty member uses the copy for the faculty member's personal research, private study, review, criticism or news reporting; and
 - (c) where the faculty member uses the paper copy for review, criticism or news reporting, the faculty member mentions:

- (i) the source; and
- (ii) if given in the source, the name of the author of the work.

Electronic Copies

24. A single copy in electronic form may be made by a faculty member pursuant to the Copying Guidelines, subject to the following safeguards:
- (a) the faculty member requires the copy for the faculty member's personal research, private study, review, criticism or news reporting;
 - (b) where the faculty member uses the electronic copy for review, criticism or news reporting, the faculty member mentions:
 - (i) the source; and
 - (ii) if given in the source, the name of the author of the work; and
 - (c) the faculty member does not transmit the electronic copy to a third party, except where the transmission is pursuant to the purpose of review, criticism or news reporting.
25. A single copy in electronic form may be made by a staff member of the university for a faculty member pursuant to the Copying Guidelines, subject to the following safeguards:
- (a) the faculty member advises the staff member that the faculty member requires the copy for the faculty member's personal research, private study, review, criticism or news reporting;
 - (b) the faculty member uses the copy for the faculty member's personal research, private study, review, criticism or news reporting;
 - (c) where the faculty member uses the electronic copy for review, criticism or news reporting, the faculty member mentions:
 - (i) the source; and
 - (ii) if given in the source, the name of the author of the work.