

71.03	Fair Dealing	GUIDELINES
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1.0 PURPOSE

- 1.1 These guidelines provide the circumstances under which copyright protected materials may be copied under the “fair dealing” exception of the *Copyright Act* (Canada).

2.0 SCOPE

- 2.1 The fair dealing provision in the *Copyright Act* (Canada) 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.

First, the “dealing” must be for a purpose stated in the *Copyright Act* (Canada): research, private study, criticism, review, news reporting, education, satire, and parody. Educational use of a copyright protected work passes the first test.

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.

These guidelines apply fair dealing in non-profit post-secondary educational institutions and provide reasonable safeguards for the owners of copyright protected works in accordance with the *Copyright Act* (Canada) and the Supreme Court decisions.

3.0 GUIDELINES

- 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 or otherwise restricted to students of a school or post-secondary educational institution;

Executive Policy Sponsor: VP, Academic	Policy Steward: Director, Libraries & Educational Technology	Revision Approved: VP, Academic September 8, 2017	Revision Effective Date: September 15, 2017	Next Review: SEP 2020
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c. as part of a course pack.

3.4 A short excerpt means:

- a. up to 10 per cent 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;
- g. an entire entry from an encyclopedia, annotated bibliography, dictionary, or similar reference work.

3.5 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.

3.6 Copying or communicating that exceeds the limits in these Fair Dealing Guidelines may be referred to a supervisor or other person designated by the educational institution for evaluation. An evaluation of whether the proposed copying or communication is permitted under fair dealing will be made based on all relevant circumstances.

3.7 Any fee charged by the educational institution 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.

4.0 LIMITATIONS

4.1 The *Copyright Act* (Canada) includes additional education use exceptions [Section 29.4 Educational Institutions] that are relevant to the teaching and learning environment of the College. These guidelines only apply to the fair dealing exception in the *Copyright Act* (Canada).

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5.0 POLICY SUPPORTS

RELATED POLICIES & PROCEDURES

- 71.01 Use of Copyright Materials Policy
- 31.01 Academic Integrity Policy
- 42.01 Employee Code of Conduct Policy
- 32.01 Student Appeals Policy
- 33.01 Student Code of Conduct Policy

ADDITIONAL RESOURCES

- Faculty Collective Agreement 2011-2014
- Operational Support Collective Agreement 2012-2015
- Professional Support Collective Agreement 2011-2014
- Student Misconduct Report Form
- Student Misconduct Decision Form
- Copyright Guide: <http://subjectguides.nscC.ca/copyright>

6.0 REVISION LOG

	Effective Date:	SCOPE	Action:	Approved by:
6.1	SEP 24, 2012	NEW POLICY	Guidelines proposed by ACCC and supported by legal advice were approved verbatim as NSCC's Guidelines.	Catherine MacLean, Vice President, Learner & College Development and Bruce Tawse, Vice President, Academic
6.2	SEP 15, 2017	MINOR CHANGE	Guidelines text was imported unchanged into NSCC's current template for Policy documents and will be published on the nscC.ca website, the NSCC policy repository intranet site and updated in the Copyright subject guide.	Anna Burke, Vice President Academic

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