

Procedure Title:

## Copyright Procedures

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B-001

Approval Body:

University Administration

Responsible Designate:

The Provost and Vice-President, Academic is responsible for the development, administration, and review of these procedures.

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Not applicable

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### 1.0 Procedure Purpose

To implement the Copyright Policy, the Procedures outlined in this document shall be followed.

### 2.0 Definitions

The following definitions apply to terms as they are used in these Procedures:

- 2.01 “Educational Exception”** means: an exception to infringement of Copyright, as described in sections 29.4 through 30.04 of the Copyright Act, and a right of users.
- 2.02 “Fair Dealing Guidelines”** means: generalized principles for the Copying and Communicating of Copyright-protected Materials under Fair Dealing, as described in Appendix “A” of this Policy.
- 2.03 “Insubstantial Use”** means: the Copying or Communicating of a few sentences from a Work as a quotation in a paper, thesis, periodical article, or similar text.
- 2.04 “Lesson”** means: a lesson, test, or examination, as described in section 30.01 of the Copyright Act.
- 2.05 “Library Reserve”** means: Materials identified by faculty for a specific course or program of instruction and made available only to students and faculty who require access for that course or program of instruction by the University Library.
- 2.06 “LMS”** means: Learning Management System
- 2.07 “Short Excerpt”** means: a part of a Copyright-protected Material, as described in the Fair Dealing Guidelines.
- 2.08 “Technological Protection Measure”** means: a digital lock as described in section 41 of the [Copyright Act](#).

Additionally, all Definitions in the Copyright Policy are incorporated into these Procedures and shall apply as fully as if they had been set out verbatim herein

### **3.0 Scope**

These Procedures apply to all University Employees, students, and other persons who may Use Copyright-protected Materials in the course of their association with the University.

## **4.0 Procedure Elements**

### **4.01 Common Requirements in Respect of Copyright-Protected Materials**

#### **4.01.01 Use of Copyright-protected Materials**

- a. No person shall Use a Copyright-protected Material without the permission of the Copyright holder, except where permitted under law.
- b. Where the University or any person has entered into a licensing agreement or contract with a Copyright holder to Use a Copyright-protected Material, or has otherwise obtained permission to Use a Copyright-protected Material, the terms of the agreement, contract, or permission shall govern the Use of the Material.
- c. No person shall circumvent a Technological Protection Measure without the permission of the Copyright holder, except where permitted by law.
- d. While the University is not liable for any infringing Use of Copyright-protected Material by students or other persons including Copying using photocopiers, scanners, or other equipment made available by the University, all photocopiers and similar equipment used for the Copying of Copyright-protected Materials shall have a notice affixed warning of infringement of Copyright (see Appendix "B" attached).
- e. Insubstantial Use does not require the permission of the Copyright holder.
- f. Instructional Materials of an Employee, including slides, notes, outlines, presentations, handouts, tests, exams, and other course and lecture Materials, shall not be recorded without the consent of the Employee, and shall not be Used for purposes other than the personal study of those students currently enrolled in the particular course or program of study to which the instructional Materials relate, and administrative functions of the University, without the consent of the Employee.

#### **4.01.02 Obtaining Permission to Use Copyright-protected Materials**

Where permission of the Copyright holder is required for the Use of a Copyright-protected Material, that permission shall be in writing and contain:

- a. the name and contact information of the person who gave the permission;
- b. the date; and
- c. what Use was permitted.

#### **4.01.03 Posting of Copyright-protected Materials on University Websites**

- a. The posting of a Copyright-protected Material on a University website shall be accompanied by an appropriate citation identifying the source and, if given in the source, the author of the Material.

- b. All University websites shall include a mechanism by which any person may contact the owner of the website to provide notice of alleged Copyright infringement.

## **4.02 Educational Exceptions for Employees in Respect of Copyright-Protected Materials**

### **4.02.01 General**

- a. Employees may Use Copyright-protected Materials without the permission of the Copyright holder in compliance with the Educational Exceptions as described in sections 29.4 through 30.04 of the Copyright Act.
- b. Educational Exceptions are separate and distinct from Fair Dealing.
- c. Any fee charged by the University in relation to the Use of a Copyright-protected Material under this part must be intended to cover only the costs of the University, including overhead costs.
- d. Any use of an Educational Exception in a Lesson must, if applicable, comply with section 30.01 of the [Copyright Act](#).
- e. Academic Staff who utilize the LMS to deliver course instruction or distribute course materials shall, within the academic term in which the course is offered, view the copyright educational video made available within the LMS, unless they have already viewed the video within the last two years.

### **4.02.02 Displaying Works for Instruction**

For the purposes of education or training on University premises, Employees may Copy a Copyright-protected Work, or do any other necessary act, to display it as described in section 29.4 of the [Copyright Act](#).

### **4.02.03 Tests or Examinations**

Employees may:

- a. copy, translate, or perform in public on University premises, or
- b. Communicate to the public situated on University premises

a Copyright-protected Material as required for a test or examination as described in section 29.4 of the [Copyright Act](#).

### **4.02.04 Performances**

Employees may perform Copyright-protected Materials for the purposes of education or training and not for profit

- a. using legally acquired Material or Material that the Employee has no reasonable grounds to believe infringes Copyright,
- b. on University premises, and
- c. before an audience consisting primarily of students, instructors, or any person who is directly responsible for setting curriculum

as described in section 29.5 of the [Copyright Act](#).

#### **4.02.05 News and Commentary**

Using legally acquired Material and for the purposes of student education or training, Employees may Copy and perform a news program or a news commentary program as described in section 29.6 of the [Copyright Act](#).

#### **4.02.06 Broadcasts**

Using legally acquired Material, Employees may Copy broadcasts as described in sections 29.7 and 29.9 of the [Copyright Act](#).

#### **4.02.07 Literary Collections**

Using legally acquired Material, Employees may Copy broadcasts as described in sections 29.7 and 29.9 of the [Copyright Act](#).

#### **4.02.08 Material Available Through the Internet**

Employees may Copy, Communicate, and perform Copyright-protected Materials available through the internet for educational or training purposes as described in section 30.04 of the [Copyright Act](#).

### **4.03 Library, Archives, and Museum Exceptions in Respect of Copyright-Protected Materials**

#### **4.03.01 General**

- a. Employees in University libraries, archives, and museums may Use Copyright-protected Materials without the permission of the Copyright holder as described in sections 30.1 through 30.21 of the Copyright Act.
- b. Sections 30.1 through 30.21 of the Copyright Act are separate and distinct from Fair Dealing.
- c. Any fee charged by the University in relation to the Use of a Copyright-protected Material under this part must be intended to cover only the costs of the University, including overhead costs.

#### **4.03.02 Management and Maintenance of Collection**

Employees in University libraries, archives, and museums may Copy Copyright-protected Materials for the purpose of the maintenance or management of a collection as described in section 30.1 of the [Copyright Act](#).

#### **4.03.03 Fair Dealing for Patrons**

Employees in University libraries, archives, and museums may do anything on behalf of any person that the person may do personally under Fair Dealing as described in section 30.2 of the [Copyright Act](#) and this Policy.

#### **4.03.04 Copying of Archival Copyright-protected Materials**

Employees in University archives may Copy archival unpublished Works as described in section 30.21 of the [Copyright Act](#).

### **4.04 Common Fair Dealing Requirements in Respect of Copyright-Protected Materials**

**4.04.01** The Fair Dealing Guidelines (see Appendix “A” attached) apply to all use of Fair Dealing and permit the Copying and Communicating of a Short Excerpt without the consent of the Copyright holder subject to certain limitations

**4.04.02** The Copyright-protected Material from which the Short Excerpt is Copied must be in the lawful possession of the University or the person making the Short Excerpt.

**4.04.03** The Copying or Communicating of multiple Short Excerpts from the same Copyright-protected Material with the intention of Copying or Communicating substantially the entire Material is prohibited.

**4.04.04** Short Excerpts may only be Communicated to those persons who require access for the Fair Dealing purpose for which the Short Excerpt was created or received.

**4.04.05** Where the Copying or Communicating of a Short Excerpt under Fair Dealing would not be in compliance with the Fair Dealing Guidelines, the University’s Copyright Office must be consulted.

**4.04.06** On being consulted, the University’s Copyright Office shall determine whether there is any basis on which such Copying or Communicating may be authorized.

#### **4.05 Common Fair Dealing Requirements in Respect of Copyright-Protected Materials**

This part applies the Fair Dealing Guidelines (see Appendix “A” attached) in particular contexts at the University. Other uses of Fair Dealing may also be permissible, provided that they are in compliance with the Fair Dealing Guidelines

##### **4.05.01 Course or Program Instruction**

If Copying or Communicating a Short Excerpt under Fair Dealing for course or program instruction, the Short Excerpt may only be Communicated to those students and Employees who require access for the specific course or program of instruction to which the Short Excerpt relates.

##### **4.05.02 Copying and Communicating of Course Material**

Employees may Copy or Communicate a Short Excerpt to students as course material, including by

- a. Providing a copy to a student,
- b. Emailing a copy to a student,
- c. Including in a course pack, provided no profit is made on the production and sale of the course pack,
- d. Including in a lecture or classroom presentation such as a PowerPoint presentation presented to students,
- e. Displaying a copy in a classroom to students,
- f. Providing a link to the Material through the University Library catalogue,
- g. Posting a copy to the University’s learning management system (see below), and
- h. Placing a copy on Library Reserve (see below).

#### **4.05.03 Copying of Audiovisual Works as Course Material**

Employees may Copy Short Excerpts of audiovisual Works as course material

- a. using a video recording device to record a Short Excerpt from a computer, television screen, or projection, or
- b. using screen capture software that enables the Copying of audiovisual content after the content has been lawfully decrypted by a licensed computer or other media player.

#### **4.05.04 Copying of Musical Works and Sound Recordings as Course Material**

Employees may Copy Short Excerpts of musical Works and Sound Recordings as course material

- a. using an audio recording device when the recording is being played on audio equipment, or
- b. where the playing of the recording resulted from lawfully decrypting the recording.

#### **4.05.05 Learning Management System**

Employees may post a Short Excerpt to the LMS only as follows

- a. A Short Excerpt may be posted or stored in the LMS with the following requirements
  - i. by Employee request of the Library to post to the LMS or by Employee themselves utilizing any program as may be required by the University,
  - ii. the basis on which the Short Excerpt is able to be so utilized (e.g. permission obtained from Copyright holder, under license, Fair Dealing, public domain) shall be recorded and retained,
  - iii. access is limited to students and employees who require access for the specific course or program of instruction to which such Short Excerpt relates, and
  - iv. no more than one Short Excerpt from a Copyright-protected Material across all editions of the Material may be made available to students in a specific course or program of instruction irrespective of the format (LMS, Library Reserve, etc.) in which it is made available.
- b. The Copyright Office may periodically review Copyright-protected Materials posted to the LMS.
- c. Transactional licenses may be secured from Copyright holders for the posting of a Material that exceeds a Short Excerpt.

#### **4.05.06 Inter-library Loans**

The University Library may provide Short Excerpts to another library, whether to the library requesting the copy or directly to a patron of that library, by Copying the Short Excerpt onto paper or Communicating it in electronic form, provided that

- a. If the copy is made onto paper, the University Library has received from the requesting library written confirmation that the copy is required by a patron of that library for a Fair Dealing purpose and that the patron is a member of the institution requesting the copy, and
  - i. the copy is marked with the following notice

*“This copy was made pursuant to the Copyright Policy of the University of Winnipeg. The copy may only be used for the purpose of research, private study, criticism, review, news reporting, education, satire, or parody. If the copy is used for the purpose of review, criticism, or news reporting, the source and the name of the author must be mentioned. The use of this copy for any other purpose may require the permission of the Copyright owner.”*
- b. If the copy is made and delivered in electronic form, the University Library has received from the requesting library written confirmation that the copy is required by a patron of that library for a Fair Dealing purpose and that the patron is a member of the institution requesting the copy, and
  - i. the following notice is marked on the electronic copy or is otherwise displayed to the library and the library patron

*“This copy was made pursuant to the Copyright Policy of the University of Winnipeg. The copy may only be used for the purpose of research, private study, criticism, review, news reporting, education, satire, or parody. If the copy is used for the purpose of review, criticism, or news reporting, the source and the name of the author must be mentioned. The use of this copy for any other purpose may require the permission of the Copyright owner.”*
  - ii. any intermediate paper copy used to make the electronic copy is destroyed promptly after the electronic copy is transmitted.

#### **4.05.07 Library Reserve**

The University Library may place Short Excerpts on Library Reserve, in paper or electronic form, provided that

- a. A request to put the Short Excerpt on Library Reserve is made by or on behalf of a faculty member and in respect of a specific course or program of instruction;
- b. For paper copies, the number of copies made does not exceed the number of students enrolled in the course or program of instruction;
- c. For electronic copies, the copy is only accessible to students enrolled in the specific course or program of instruction; and

- d. The copy is marked with the following notice:

*“This copy was made pursuant to the Copyright Policy of the University of Winnipeg. The copy may only be used for the purpose of research, private study, criticism, review, news reporting, education, satire or parody. If the copy is used for the purpose of review, criticism, or news reporting, the source and the name of the author must be mentioned. The use of this copy for any other purpose may require the permission of the Copyright owner.”*

## **5.0 Associated Policy**

- Copyright Policy

## **6.0 Related Policies, Procedures and Institutional Documents**

- Not Applicable



## APPENDIX “A”

### FAIR DEALING GUIDELINES

#### PART 1

#### INTRODUCTION TO FAIR DEALING

The Fair Dealing exception in the Copyright Act permits the Use of a substantial part of a Copyright-protected Material without permission from the Copyright holder or the payment of Copyright royalties. To qualify as Fair Dealing, the proposed Use must pass two tests.

First, the “dealing” must be for a purpose stated in the Copyright Act: research, private study, criticism, review, news reporting, education, satire or parody. Educational Use of Copyright-protected Materials passes the first test.

The second test is that the dealing must be “fair.” In landmark decisions in 2004 (*CCH Canadian Ltd v. Law Society of Upper Canada*) and 2012 (*Alberta (Minister of Education) v. Canadian Copyright Licensing Agency (Access Copyright)*), the Supreme Court of Canada provided guidance as to what this test means in educational institutions.

“Fairness” is determined by weighing certain considerations in regard to a proposed Use of a Copyright-protected Material. The Supreme Court of Canada has identified six factors that may assist in determining fairness:

- The purpose of the dealing,
- The character of the dealing,
- The amount of the dealing,
- Alternatives to the dealing,
- The nature of the work, and
- The effect of the dealing on the work.

The six factors are not exhaustive; other factors may be relevant to a proposed Use of a Copyright-protected Material. In addition, not all factors must be satisfied for a dealing to be considered “fair,” and some factors may be weighed more heavily than others.

1. The “purpose” of the dealing refers to the ultimate goal of the end user.
2. The “character” of the dealing refers to how the Copyright-protected Material is Used, distributed, and retained. For example, if multiple copies of a Copyright-protected Material are being widely distributed, this may tend to be unfair. In contrast, a single copy of a Copyright-protected Material being Used for a specific legitimate purpose is more likely to be considered fair. Limited Use, distribution, and retention of a Copyright-protected Material may generally favour a finding of fairness.
3. The “amount” of the dealing refers to the proportion of the Copyright-protected Material that is being Used. The Requirements below outline example amounts that can generally be considered fair for enumerated Fair Dealing purposes. But in all cases, no more of the Copyright-protected Material should be Used than is necessary.
4. “Alternatives” to the dealing refers to the availability of alternatives to Using the Copyright-protected Material. For example, is a similar Material not protected by Copyright available for

Use? And is it reasonably necessary to Use the Copyright-protected Material to achieve the ultimate purpose? The availability of a license, however, is not a valid consideration in determining alternatives to the dealing.

5. The “nature of the work” refers to a consideration of whether the Copyright-protected Material is unpublished or published, and whether it is intended for public consumption or private Use only.
6. The “effect of the dealing on the work” refers to the effect the Use may have on the original Copyright-protected Material. If the reproduced Material is likely to compete with the market of the original Material, this may suggest that the dealing is not fair.

Having applied these considerations and with the reasonable belief that a proposed Use is fair, Employees, students and other persons may Use a Short Excerpt of a Copyright-protected Material under Fair Dealing according to the Requirements below and the University’s Copyright Policy.

## **PART 2**

### **FAIR DEALING REQUIREMENTS**

The University reasonably believes that these Requirements provide reasonable safeguards for the owners of Copyright-protected Material in accordance with the Copyright Act and the Supreme Court of Canada decisions.

1. Employees, students, and other persons at the University may Copy and Communicate, in paper or electronic form, a Short Excerpt from a Copyright-protected Material for the purposes of research, private study, criticism, review, news reporting, education, satire, or parody.
2. Bibliographic information (cite the source) must be provided when Copying or Communicating Short Excerpts from Copyright-protected Materials under these Fair Dealing Requirements for all of the purposes cited in item 1.
3. A copy of a Short Excerpt from a Copyright-protected Material may be Communicated to each student enrolled in a class or course pursuant to the University’s Copyright Policy.
4. A Short Excerpt means:
  - a. up to 10% of a Copyright-protected Material (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 Workprovided that in each case, no more of the Material is copied than is required in order to achieve the allowable purpose.
5. Although the portion of a Copyright-protected Material that may be Copied to produce a Short Excerpt is intended as an approximation that will generally be fair in most circumstances, all

proposed Copying must be considered in light of the larger, six-factor framework, and, where there is any doubt or uncertainty, the Copyright Office should be consulted for advice.

6. Copying or Communicating multiple Short Excerpts from the same Copyright-protected Material, with the intention of Copying or Communicating substantially the entire Material, is prohibited.
7. Any fee charged by the University for Communicating or Copying a Short Excerpt from a Copyright-protected Material must be intended to cover only the costs of the University, including overhead costs.

Any proposed Copying or Communicating under Fair Dealing that exceeds the limits in these Fair Dealing Requirements shall be referred to the Copyright Office before proceeding.

## **APPENDIX “B”**

### **COPYING & COPYRIGHT**

Did you know that copies made on this equipment are subject to Canadian copyright law? Know your rights and responsibilities!

#### **REMEMBER**

**To copy or scan materials you must:**

Have permission or a license from the copyright owner or comply with the Fair Dealing Requirements.

#### **WHY?**

##### **The Copyright Act**

The Copyright Act governs your right to make copies of copyright-protected material (books, articles, works of art, and more) in Canada. It contains a Fair Dealing exception that permits the fair use of a part of a copyright-protected material without permission from the copyright holder or the payment of copyright royalties.

##### **The Fair Dealing exception**

To qualify as Fair Dealing, the “dealing” must be for the purpose of education, research, private study, criticism, review, news reporting, satire, or parody. It must also be assessed as fair

##### **Assessing fairness**

Canada’s Supreme Court has identified six factors to consider in assessing fairness:

- The purpose of the dealing
- The character of the dealing
- The amount of the dealing
- Alternatives to the dealing
- The nature of the work
- The effect of the dealing on the work

##### **Our Copyright Policy**

The University of Winnipeg has adopted a Copyright Policy to assist in identifying what may be copied under the Fair Dealing exception. Having applied the above considerations and with the reasonable belief that a proposed copying is fair, the copying of short excerpts of copyright-protected material is permitted as described in the Requirements below.

**The University is not liable for any infringing copies made or shared using copiers or scanners made available by the University.**

#### **REQUIREMENTS**

##### **Use the Fair Dealing exception appropriately**

Employees, students, and other persons at the University of Winnipeg may copy and communicate, in paper or electronic form, a short excerpt from a copyright-protected material for the purposes of research, private study, criticism, review, news reporting, education, satire, or parody

##### **Cite the source**

Bibliographic information must be provided when copying or communicating short excerpts from copyright-protected materials under these Fair Dealing Requirements.

**The following examples qualify as a short excerpt**

- Up to 10% of a copyright-protected material
- One chapter from a book
- A single article from a periodical
- An entire artistic work (including a painting, print, photograph, diagram, drawing, map, chart, or plan) from a copyright-protected work containing other artistic works
- An entire newspaper article or page
- An entire single poem or musical score from a copyright-protected work containing other poems or musical scores
- An entire entry from an encyclopedia, annotated bibliography, dictionary, or similar reference work

**The following is prohibited:**

- Copying more of the material than is required to achieve the allowable purpose
- Copying or communicating multiple short excerpts from the same copyright-protected material, with the intention of copying or communicating substantially the entire material

Note: Any fee charged by the University of Winnipeg for communicating or copying a short excerpt from a copyright-protected material must only be intended to cover the costs of the University, including overhead costs.