



STATEMENT OF PRINCIPLES ON FAIR DEALING IN EDUCATION

Prepared by the ACP Higher Education Committee

Endorsed by the ACP Board of Directors

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We hope this statement will help move Canadians towards a shared understanding of fair dealing by articulating some underlying principles of fairness.

Fairness in the unpaid use of copyright-protected material in educational settings—whether in print or digital form—is defined by intention, purpose and action, not solely or primarily by the amount of material that is copied. When instructors' purpose in copying is to create "textbook-like collections," it is not fair.

It is not the number of words copied, but the importance of the words and the fairness of purpose, that determines when the copyright holder's permission is required.

We believe the following principles characterize fair dealing:

1. Quantitative limits on fair dealing are not at the heart of defining what is fair. In the absence of a permission negotiated with copyright owners or their representatives, an arbitrary amount becomes a guideline for unfair copying: regardless of the purpose or impact of copying, the analysis starts and ends with calculating a quantity. That is not fair.
2. "Textbook-like collections" are created by instructors during their course planning and are most often presented as course outlines. For any resource that appears as required material on an instructor's course outline, copyright owners should be paid. Although the copying of short excerpts to complement core resources may be fair, fair dealing is not intended to enable the assembly of textbook-like collections, whether digitally or on paper. That is not fair.
3. Fair dealing is intended to facilitate transformative uses of copied material, such as new research, criticism, and satire. When copying is simply duplication for distribution, it is not fair dealing.
4. Fair dealing is intended to enable situational uses of copyright-protected material, in support of free expression, expanded discourse, and creativity. Fair dealing is spontaneous—not planned, organized, coordinated for maximum value gained, or designed specifically to avoid payment. If copying is not spontaneous, it is not fair dealing.
5. Fair dealing depends on copying from a legal source. Copying from an illegally acquired original is not fair dealing.



6. Fair dealing is not intended to exclude paying for the work of authors and all those involved in the original publishing of the material when those doing the copying are being paid for their work, or when students are being charged for the materials. That is not fair.

7. Fair dealing is not intended to cause damage to the markets for works, along with the livelihoods of authors and publishers, and their ability to create new works. Depending on the work, such damage can occur at any level of copying, but damage is very likely when large amounts of a work are copied, or when multiple copies are made. If copying damages the market for a work, it is not fair dealing.

As long-term, effective partners in education, Canadian-owned higher-education publishers are open to discussion and negotiation on the limits of fair dealing. We propose that copyright users adopt policies based in the principles we outline here, an approach that recognizes that authors, publishers, professors, learners, universities, colleges and schools are partners, not adversaries, in education.

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