Application of Fair Dealing under Policy R30.04

1. Purpose

1.1 The purpose of this Appendix is to explain how the University manages its fair dealing rights and responsibilities pursuant to Policy R30.04, and Canada’s copyright law when copyright protected works in any media are used for a bona fide university teaching, learning, research and administrative purpose.

2. Scope

2.1 This Appendix to Policy R30.04 applies to all University employees and students who reproduce and use copyright protected works in all media and formats in the course of University teaching, learning, research and administrative activities.

2.2 This Appendix applies when the copies made of a copyright protected work are covered by the fair dealing exception in Canada’s Copyright Act. The fair dealing provision permits use of a copyright protected work without permission from the copyright owner or the payment of copyright royalties.

2.3 For greater clarity and certainty, this Appendix applies only to the University entities listed in s.2.1 of Schedule R30.04A.

3.0 Introduction

3.1 To qualify for fair dealing, two tests must be passed.

3.2 First, the “dealing” must be for a purpose stated in the Copyright Act:

   (i) Research,
   (ii) Private study,
   (iii) Education,
   (iv) Parody,
   (v) Satire,
   (vi) Criticism or review, or
   (vii) News reporting.

Educational use of a copyright protected work passes the first test.

3.3 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 educational institutions.

3.4 Policy R30.04 and this Appendix apply fair dealing in a non-profit university and provide reasonable safeguards for the owners of copyright protected works in accordance with the Copyright Act and Supreme Court decisions.
4.0 Fair dealing requirements and limits

4.1 University employees and students may reproduce and communicate, in paper or electronic form, short excerpts from a copyright protected work for the purposes of research, private study, education, parody, satire, criticism or review or news reporting.

4.2 Copying or communicating short excerpts from a copyright protected work under Policy R30.04 and this Appendix for the purpose of news reporting, criticism or review must mention the source and, if given in the source, the name(s) of the creator(s) of the work.

4.3 A copy of a short excerpt from a copyright protected work may only be provided or communicated to each student registered or engaged in a course, unit or program of academic, continuing, professional or vocational study administered by the University:

(i) As a class handout,
(ii) As a posting to a learning or course management system that is password protected or otherwise restricted to, and accessible only by, students of the University in the specific course, unit or program,
(iii) As part of a course pack.

4.4 A short excerpt means:

(i) Up to 10% of a copyright protected work (including a literary work, musical score, sound recording and an audiovisual work),
(ii) One chapter from a book,
(iii) A single article from a periodical,
(iv) An entire artistic work (including a painting, print, photograph, diagram, drawing, map, chart, and plan) from a copyright protected work containing other artistic works,
(v) An entire newspaper article or page,
(vi) An entire single poem or musical score from a copyright protected work containing other poems or musical scores,
(vii) An entire entry from an encyclopedia, annotated bibliography, dictionary or similar reference work.

4.5 In each case above, the short excerpt copied must contain no more of the work than is required in order to achieve the fair dealing purpose.

4.6 Any fee charged by the University for copying or communicating a short excerpt from a copyright protected work must be intended to cover only the costs to the University, including overhead costs.

4.7 Copying or communicating multiple short excerpts from the same copyright protected work, with the:

(i) Effect of exceeding the copying limits set out in Section 4.4 of this Appendix or
(ii) Intention of copying or communicating substantially the entire work,

is prohibited.

4.8 The fair dealing exception may also cover certain instances of copying or communication that are not described in this Appendix to Policy R30.04. If proposed copying or communication is for a fair dealing purpose but the copying or communication exceeds the limits in this Appendix, you must submit a written request to the University’s Copyright Officer for evaluation. A determination of whether the proposed copying or communication is permitted under fair dealing will be made based on all relevant circumstances, including this Appendix and its companion Appendix R30.04B. Standard for Evaluating if a Particular Instance of Copying is Fair Dealing.
4.9 Other sources of permission (including permission from a copyright holder) will be required where the copy falls outside of these requirements and limits. For assistance in obtaining the permission required for this copying or communication, contact the University’s Copyright Officer.

5.0 Responsible persons

5.1 The following persons have responsibilities under this Appendix:

(i) University employees and students have responsibility for complying with the requirements of this Appendix, Canada’s copyright law and the University’s copyright policy R30.04 and related policy documents using the available institutional resources and services.

(ii) The University’s Copyright Officer has responsibility for evaluating and deciding whether a proposed copying or communication is permitted under the fair dealing exception when it exceeds the limits set out in this Appendix.

6.0 Definitions

The interpretation of each fair dealing category defined below is meant to be illustrative and not restrictive.

6.1 Communication means the exchange of a work by means of sending or receiving the work, such as by telephone lines or computers.

6.2 Copyright protected work means:

(i) A creative work containing the original expression of an idea,

(ii) That is fixed by means of recording or expressed in some material form of more or less permanent endurance, and

(iii) The author is a citizen or resident of Canada or another treaty country.

6.3 Creator(s) of the work means the name(s) of the:

(i) Author, in the case of a work,

(ii) Performer, in the case of a performer’s performance,

(iii) Maker, in the case of a sound recording, or

(iv) Broadcaster, in the case of a communication signal.

6.4 Criticism means the analysis and judgment of the merits and faults of a work.

6.5 Education means the process of receiving or giving systematic instruction, information about or training in a particular field or subject.

6.6 News reporting means a spoken or written account of an event, subject or situation, especially one intended for publication or broadcast in the media.

6.7 Parody means an imitation of the style of a particular person or genre with deliberate exaggeration for comic effect.

6.8 Private study means for the use of one particular person or group of people only, who devote time and attention to acquiring knowledge on a subject.

6.9 Review means a critical appraisal of a work published in a periodical.

6.10 Research means:

(i) The systematic investigation into and study of materials and sources in order to establish facts and reach new conclusions; or

(ii) The piecemeal, informal, exploratory or confirmatory activities undertaken for the purpose of personal interest.
6.11 **Satire** means the use of humour, irony, exaggeration or ridicule to expose and criticize people's behaviour, particularly in the context of contemporary topical issues.

6.12 **Short excerpt** means as described above in section 4.4.

6.13 **University** means Simon Fraser University, which is a non-profit university.

6.14 **Work** means published and unpublished creative works such as:

(i) Literary works including manuscripts, tables, and computer programs;

(ii) Dramatic works including recitation, choreography, mime, play, cinematography with dramatic elements;

(iii) Musical works including a musical composition; and

(iv) Artistic works including paintings, drawings, maps, charts, plans, photographs, engravings, sculptures, works of artistic craftsmanship and architectural works.

7.0 **Related documents**

7.1 The policy documents related to this Appendix include, but are not limited to, those listed below.

- **Policies**  
  POL-R30.04 Copyright Compliance and Administration

- **Schedules**  
  SCD-R30.04A Entities Covered and not Covered by the Scope of Policy R30.04

- **Appendices**  
  APPX-30.04B Standard for Evaluating if a Particular Instance of Copying is Fair Dealing under Policy R30.04

8.0 **Policy review**

8.1 This Appendix will be reviewed at least every three years from its date of first approval to reflect, as needed, changes in copyright law, its interpretation, application and administration.

9.0 **Authority**

9.1 The Dean of Library Services has approved this Appendix for use under Policy R30.04 in consultation with the Office of the Vice President, Legal Affairs.

10.0 **Interpretation**

10.1 Questions of interpretation and application will be referred to the President, whose decision is final.