Standard for Evaluating if a Particular Instance of Copying is Fair Dealing under Policy R30.04

1. Purpose

1.1 The purpose of this Appendix is to explain how the University evaluates whether a particular instance of copying or communication of a copyright protected work is permitted under the fair dealing exception when it exceeds the limits in Appendix R30.04A, Application of Fair Dealing under Policy R30.04.

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 proposed copying or communication of copyright protected work may be covered by the fair dealing exception in Canada’s Copyright Act and it exceeds the limits in Appendix R30.04A.

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

3. 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 This Standard for Evaluating if a Particular Instance of Copying is Fair Dealing describes the test expressed in Supreme Court decisions.
4. **Test for evaluation if a particular instance of copying is fair dealing**

4.1 The University's Copyright Officer will evaluate and decide if a proposed copying or communication of a copyright protected work is permitted under the fair dealing exception when it exceeds the limits in Appendix R30.04A. The decision will be made considering all relevant circumstances, including:

(i) The purpose of the proposed copying, including whether it is for a fair dealing purpose enumerated in Canada's *Copyright Act*,

(ii) 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,

(iii) The amount of the dealing from the individual user’s perspective, including the proportion of the work that is proposed to be copied and the importance of that excerpt in relation to the whole work,

(iv) Alternatives to copying the work, including whether there is a non-copyrighted equivalent available,

(v) The nature of the work, including whether it is published or unpublished, and

(vi) The effect of the copying on the work, including whether the copy will compete with the commercial market of the original work.

5. **Responsible persons**

5.1 The following persons have responsibilities under this Appendix:

(i) The University’s Copyright Officer has responsibility for using this Appendix to evaluate and decide whether a proposed copying or communication is permitted under the fair dealing exception when it exceeds the limits in Appendix R30.04A.

(ii) University employees and students have responsibility for complying with the decision made by the University’s Copyright Officer under this Appendix.

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

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

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

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

6.8 **Review** means a critical appraisal of a work published in a periodical.

6.9 **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.

6.10 **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.

6.11 **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. **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-30.04A** Application of Fair Dealing under Policy R30.04

8. **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. **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. **Interpretation**

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