Appendix E to Policy R30.04

Application of Appendix R30.04A (Fair Dealing Policy) to the Production and Sale of Course Packs

1.0 Purpose

1.1 The purpose of this Appendix is to provide guidance on the application of Appendix R30.04A - Application of Fair Dealing under Policy R30.04 (the Fair Dealing Policy) to the production and sale of course packs.

2.0 Scope

2.1 This Appendix to Policy R30.04 (Copyright Compliance and Administration Policy) 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 Background

3.1 A course pack comprises a compilation of excerpts of different works to be used as required or supplementary readings by students enrolled in a course of instruction.

3.2 The University may rely on Appendix R30.04A (the Fair Dealing Policy) and the guidelines in this Appendix to make copies of short excerpts (as that term is defined in Appendix R30.04A) for use in course packs. This Appendix provides guidance on the application of Appendix R30.04A to the production and sale of course packs by the university.

4.0 Guiding Principle

4.1 A guiding principle behind Appendix R30.04A (the Fair Dealing Policy) is that copying or communicating a copyright-protected work under the Policy is not to substitute for the purchase of the work that was copied or communicated. In order to respect that principle, it is necessary to implement certain safeguards for the owners of copyright in the works copied for inclusion in course packs.

4.2 A guiding principle behind the application of Appendix R30.04A (the Fair Dealing Policy) to the production and sale of course packs is to ensure that no “profit” is made on course pack production and sale. If there is no “profit” made in the production or sale of course packs, and the other requirements of Appendix R30.04A, as elaborated in this Appendix, are followed, then the making and sale of course packs incorporating copies of short excerpts of copyright-protected works would be permitted under fair dealing.

4.3 The policy does not permit the University to send a course pack to a commercial copy shop for the latter to reproduce copies for students.
5.0 Definition of a Short Excerpt

5.1 Section 4.4 of Appendix R30.04A (the Fair Dealing Policy) defines a short excerpt as follows:

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.

Provided that in each case, no more of the work is copied than is required in order to achieve the allowable purpose.

5.2 To give students the choice of how to access course materials, the same short excerpt may be made available to students in a course pack, a class handout, or through the University’s learning management system.

5.3 No more than a short excerpt from a work may be copied and made available to students during a specific course of instruction irrespective of the number of formats in which it is made available.

5.4 Furthermore, no more than a short excerpt from across all editions of a copyright-protected work should be included in a course pack.

6.0 Including Materials Beyond Short Excerpts in a Course Pack

6.1 If an excerpt to be included in a course pack exceeds the limitations of a short excerpt as set out in Appendix R30.04A (the Fair Dealing Policy), transactional permission for making the copies should be secured from the copyright holder or from the holder’s licensing agent.

6.2 In addition, the University may include in course packs copies of copyright-protected works for which the University has a licence with the publisher or aggregator, as long as the terms of the licence permit the making of copies for inclusion in course packs.

6.3 A copyright-protected work made available to the University under a licence with a publisher or aggregator that prohibits the use of extracts in course packs cannot be copied and included in a course pack. Any copying and/or distribution restrictions contained in the licence will take precedence over Appendix R30.04A (the Fair Dealing Policy). In order to use this material in a course pack, separate permission will need to be obtained from the publisher of the work.
7.0 **Records for Course Packs**

7.1 Records should be created and maintained (in paper or electronic form) that show for each course pack:

(i) The identity of each work included in the course pack,

(ii) Identification of the publication from which the excerpt was copied (if applicable),

(iii) The length of each excerpt included,

(iv) The basis upon which each excerpt was copied (e.g. fair dealing, library licence, work made available over the Internet, transactional licence),

(v) If the basis upon which the excerpt was copied was fair dealing of an excerpt that is 10% or less of the work, the number of pages copied and the total number of pages of the work from which the copies were made, and

(vi) Where a transactional permission is used to copy an excerpt for a course pack, a copy of the transactional permission.

8.0 **Notifications in Course Packs**

8.1 Each copy of a course pack made by the University that includes copies of short excerpts of copyright-protected works made under Appendix R30.04A (the Fair Dealing Policy) should include the following notice, or similar notice, printed in a prominent location on the course pack (e.g. on the front cover).

This course pack is made in accordance with SFU policy Appendix R30.04A - Application of Fair Dealing under Policy R30.04 for sale to and use by students enrolled in the course of study for which it was made. This course pack may also include copyright-protected material pursuant to permissions granted by the copyright holder. Any reproduction or other use of this material is strictly forbidden.

9.0 **Process for the Production Course Packs**

9.1 Short excerpts that are copied under Appendix R30.04A must be copied by the University. The individuals who produce course packs should be employees of the university or engaged by the university under a contract for services (i.e. an independent contractor) such as with a temporary employment agency.

9.2 The University may not purchase such copies (copies of the short excerpts) from a third party, such as a commercial photocopying service. If it is necessary for the University to contract with a third party to produce and sell course packs to the University, such copying cannot be undertaken under Appendix R30.04A Application of Fair Dealing under Policy R30.04 (the Fair Dealing Policy).

9.3 Retention of a Master Copy: The University may retain one paper or electronic copy of a course pack to be used only for the purpose of making course packs in the future. If the copy is an electronic copy, the copy should be maintained on a secure computer or device (e.g. password protected) with access restricted to those individuals responsible for course pack production.

10.0 **The Sale of Course Packs**

10.1 Course packs that incorporate copies of short excerpts of copyright-protected works made under the Appendix R30.04A (the Fair Dealing Policy) must be sold by the university directly to students. The course packs must not be sold to an intermediary (e.g. a student association) that sells the course packs to students.

10.2 The Appendix R30.04A (the Fair Dealing Policy) does not permit the University to send a course pack to a commercial copy shop for the latter to reproduce copies for students.
11.0 Pricing of Course Packs

11.1 The amount charged by the University for the production and sale of a course pack should not exceed the University’s cost to produce and sell the course pack. These may include a reasonable allocation of overhead costs incurred by the university.

11.2 The following examples show how overhead costs could be allocated. With respect to course pack production, assume that in the previous year:

   (i) The cost of the consumables required to make a photocopy (e.g. toner and paper) were 1.5 cents per page;

   (ii) The other production costs of course packs (e.g. salaries, leasing of photocopy equipment and the cost to operate the production facilities) were $100,000; and

   (iii) The cost of operating the bookstore for the current year is $1 million.

There is therefore $50,000 in distribution costs that can be allocated to course packs. If the bookstore estimates that it will sell 25,000 course packs, then it could allocate $2 of distribution costs to each course pack. The course pack that had a consumables cost of $1.50, plus other production costs of $10.00, plus distribution costs of $2.00 could therefore be sold by the bookstore to students for $13.50.

The distribution costs allocated to course packs should be recalculated on a periodic basis.

12.0 Including Materials Beyond Short Excerpts on an Learning Management System

12.1 In most situations where making a copy falls outside the scope of Appendix R30.04A (the Fair Dealing Policy), e.g. an extract exceeds the limitations of a short excerpt as set out in Appendix R30.04A, permission to make the copy will need to be secured from the copyright holder.

12.2 However, it is possible that the proposed copying or communication of the copyright protected work may be covered by the fair dealing exceptions or other exceptions in Canada’s Copyright Act even though it exceeds the limits in Appendix R30.04A (the Fair Dealing Policy).

12.3 Contact the Copyright Officer at copy@sfu.ca for further information if you believe that your copying may covered by fair dealing or other exceptions even though it exceeds the limits in Appendix R30.04A (the Fair Dealing Policy). Also see Appendix R30.04B Standard for Evaluating if a Particular Instance of Copying is Fair Dealing under Policy R30.04.

13.0 Guidance to Students

13.1 SFU students are covered by the University's copyright policies and must adhere to those policies. However, it is not possible to police all students and the content they may post to websites, including on an LMS, or who attach content to emails including emails posted to an LMS.

13.2 Students should be informed of the University's copyright policies, including Appendix R30.04J – Application of Appendix R30.04A (Fair Dealing Policy) to the Student Activities of Learning and Research, and should confirm that he or she will respect the university's copyright policy or copyright guidance for students.