Application of Appendix R30.04A (Fair Dealing Policy) to Audiovisual Works

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 (otherwise known as the Fair Dealing Policy) and the exemptions under sections 29.5(d) and 30.04 of the Copyright Act to the use of audiovisual works by the University.

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 Sourcing Copies of Audiovisual Works

3.1 Audiovisual works are typically sourced from distributors.

3.2 Some distributors supply audiovisual works under licence agreements that may limit the circumstances in which their works may be copied, performed or communicated. Any provision in a licence agreement that restricts the circumstances in which an audiovisual work may be copied, performed or communicated should be followed by the university community.

3.3 When sourcing an audiovisual work consideration should be given to the restrictions in any licence agreement that would impact the use of the audiovisual work for educational purposes by members of the university.

4.0 The Exemption for Performing an Audiovisual Work

4.1 Appendix R30.04A does not apply to the performance in public of an audiovisual work.

4.2 Instead, faculty, staff and students can rely on the exemption in section 29.5(d) of the Copyright Act. That exemption permits an educational institution or a person acting under its authority to perform in public an audiovisual work on the premises of the University for educational or training purposes before an audience consisting primarily of students, instructors, or any person who is directly responsible for setting curriculum. The audiovisual work must either not be an infringing copy or the person responsible for the performance must have no reasonable grounds to believe that it is an infringing copy.

4.3 The exemption in section 29.5(d) applies to performing all or any part of an audiovisual work. It does not however permit the copying of any part of an audiovisual work. In particular, section 29.5(d)
Appendix R30.04A – Application of Fair Dealing to Policy R30.04 (The Fair Dealing Policy)

5.1 Appendix R30.04A (the Fair Dealing Policy) permits faculty and staff members to copy short excerpts of a copyright-protected audiovisual work and to communicate short excerpts of the audiovisual work by telecommunication to students for research, private study and educational purposes, among other purposes. Audiovisual works include motion picture films, television programs and videos. Communicating a short excerpt of an audiovisual work by telecommunication to students includes emailing the excerpt to students and making the excerpt available to students on a learning management system.

5.2 Appendix R30.04A does not however permit the circumvention of digital locks to obtain access to a copyright-protected audiovisual work, as this is a violation of the *Copyright Act*. For more information on digital locks see the policy Appendix R30.04C - General Application of Appendix R30.04A - Application of Fair Dealing under Policy R30.04

5.3 Motion pictures and other audiovisual works that are published on DVDs are typically protected by a digital lock known as the Content Scrambling System ("CSS"). Appendix R30.04A (the Fair Dealing Policy) does not apply if it is necessary to circumvent a CSS lock in order to copy a short excerpt of a copyright-protected audiovisual work recorded on DVD. It is however permissible to reproduce a short excerpt under the policy through using a video recording device, e.g. a camcorder, to record a short excerpt from a computer, television screen or projection. It is also permissible to use screen capture software that enables the copying of DVD content after the content has been lawfully decrypted by a licensed computer DVD player. For further information about using screen capture software to reproduce a short excerpt of a copyright-protected audiovisual work contact the copyright officer at copy@sfu.ca.

6.0 Short Excerpt

6.1 The definition of a short excerpt in section 4.4 of Appendix R30.04A (the Fair Dealing Policy) includes the following:

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

6.2 Appendix R30.04A (the Fair Dealing Policy) permits faculty, staff or students to make a copy of up to 10% of a copyright-protected audiovisual work for inclusion in a classroom presentation or in a learning management system. For more information about Appendix R30.04A (the Fair Dealing Policy) and learning management systems see the policy Appendix R30.04C - Application of Appendix R30.04A (Fair Dealing Policy) to Learning Management Systems

7.0 Safeguards

7.1 In order to protect the interests of holders of copyright in copyright-protected audiovisual works, the copying and communicating of those works under Appendix R30.04A (the Fair Dealing Policy) must comply with the following safeguards:

(i) Copies of short excerpts of a copyright-protected audiovisual work are only to be provided to students enrolled in a course of study and to other faculty and staff of the university.

(ii) Copies of short excerpts of a copyright-protected audiovisual work are only to be communicated to students enrolled in a course of study and to other faculty and staff of the university.

7.2 An exception to these safeguards relates to a faculty member sharing a copy of such works or recordings with faculty members, staff or students within another university with whom the faculty member is engaged in collaborative research. For more information on copying and communicating copyright-protected works for research purposes see the policy Appendix R30.04I - Application of Appendix R30.04A (Fair Dealing Policy) to Teaching and Research by Faculty.
8.0 The Exemption for Works Available through the Internet

8.1 Section 30.04 of the Copyright Act permits reproducing, communicating and performing in public by an educational institution or a person acting under the authority of one for educational or training purposes of a copyright-protected work that is made available through the Internet. This includes an audiovisual work posted to the Internet including a YouTube video. There are a number of conditions that have to be met for the exemption to apply. For a discussion of the exemption see the policy Appendix R30.04C - General Application of Appendix R30.04A - Application of Fair Dealing under Policy R30.04.