Application of Appendix R30.04A (Fair Dealing Policy) to Teaching and Research by University Faculty and Staff

1.0 Purpose

1.1 This Appendix provides guidance on the application of the policy Appendix R30.04A - Application of Fair Dealing under Policy R30.04 ("Fair Dealing Policy") to copying and communicating of copyright-protected works by faculty and staff members (including part-time and adjunct faculty) in the course of their teaching and research. It also applies to students employed by the university as teaching assistants or instructors and to post-doctoral fellows for copying and communicating copyright-protected works done during the course of their employment.

2.0 Scope

2.1 This Appendix to Policy R30.04 applies to all University employees 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 Copyright Infringement and Exemptions

3.1 It is an infringement of copyright to copy all or any substantial part of a copyright-protected work or to communicate all or any substantial part of a copyright-protected work to the public by telecommunication without the permission of the copyright holder, unless copying or communicating the work falls within one of the exemptions in the Copyright Act.

3.2 Examples of a communication of a work to the public by telecommunication include emailing a work to more than one student and transmitting a work posted to a learning management system (e.g. Canvas) to more than one student. Learning management system is abbreviated to LMS in the remainder of this policy appendix.

3.3 The exemptions in the Act include exemptions for fair dealing, displaying a work for the purposes of education or training, and recording a lesson and communicating the recording to the public by telecommunication for educational or training purposes.
4.0 Fair Dealing

4.1 Copying and communicating works pursuant to the Appendix R30.04A (the Fair Dealing Policy) fall within the fair dealing exemption in the Copyright Act and therefore do not infringe copyright. There is no need to obtain the consent of the holder of copyright for those acts. Appendix R30.04A permits copying and communicating short excerpts of copyright-protected works by the university (including its faculty members) subject to certain safeguards to protect the interests of holders of copyright.

4.2 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.

5.0 Teaching

5.1 Under Appendix R30.04A a short excerpt of a copyright-protected work may be made by, or on behalf of, a faculty member or staff for the purpose of teaching students.

5.2 A faculty member, staff member, or his/her proxy may:
(i) Provide a copy of the short excerpt to students enrolled in a course of study as a handout,
(ii) Email a copy of the short excerpt to students enrolled in a course of study,
(iii) Post a copy of the short excerpt on an LMS stored on a secure server or other device (e.g. password protected) that is only accessible by students enrolled in a course, unit or program of instruction,
(iv) Include a copy of the short excerpt in a course pack sold to students enrolled in a course of study,
(v) Include a copy of the short excerpt in a lecture or classroom presentation such as a PowerPoint presentation presented to students enrolled in a course of study, and
(vi) Display a copy of the short excerpt in a classroom to students enrolled in a course of study.

In each case, a copy of the short excerpt may also be provided or made available as required to another faculty member and to university staff.

5.3 Additional information concerning the posting of a copy of a short excerpt of copyright-protected works to an LMS and including such a copy in a course pack are set out respectively in the policy Appendix R30.04D - Application of Appendix R30.04A (Fair Dealing Policy) to Learning Management Systems and the policy Appendix R30.04E - Application of Appendix R30.04A (Fair Dealing Policy) to the Production and Sale of Course Packs. Special circumstances relating to the
copying and performance of audiovisual works (e.g. YouTube videos) and musical works are set out respectively in the policy Appendix R30.04F - Application of Appendix R30.04A (Fair Dealing Policy) to Audiovisual Works and the policy Appendix R30.04G - Application of Appendix R30.04A (Fair Dealing Policy) to Musical Works and Sound Recordings.

5.4 As a safeguard to protect the interests of holders of copyright, the work from which the copy of the short excerpt is made must be in the lawful possession of the university, faculty member or staff member. This would include a work in the collection of the university library or of a faculty member or staff member, a work borrowed by the university library or by a faculty member or staff member through an inter-library loan, or a short excerpt that is copied and communicated to the university or a faculty member under fair dealing.

5.5 Appendix R30.04A does not permit copying or communicating a copyright-protected work for a lecture or presentation that is open to the public. However, depending on the circumstances, fair dealing exemptions as in the Copyright Act may apply when a lecture or presentation is open to the public. For information about whether the exemption applies in particular circumstances contact the university copyright officer at copy@sfu.ca.

5.6 As a safeguard to protect the interests of holders of copyright, the copying or communicating of multiple short excerpts from the same copyright-protected work for the purpose of teaching with the intention of copying or communicating substantially the entire work is prohibited.

6.0 Research

6.1 Under Appendix R30.04A (the Fair Dealing Policy) a copy of a short excerpt of a copyright-protected work may be made for use by a faculty or staff member when conducting research on a specific topic of enquiry or for inclusion in a personal collection of research resources.

6.2 The faculty or staff member may share a copy of the short excerpt with faculty, staff and students both within the university and within another university or organization with whom the member is engaged in collaborative research. In sharing a copy of the short excerpt, the member may email the copy to the collaborating individuals, or post the copy to a website on a secure server or other device (e.g. password protected), provided that the website is secured and is only accessible by those with whom the member is conducting collaborative research.

6.3 As a safeguard to protect the interests of holders of copyright, the copying or communicating of multiple short excerpts from the same copyright-protected work for the purpose of research with the intention of copying or communicating substantially the entire work is prohibited.

7.0 Exemption for displaying a work

7.1 Section 29.4(1) of the Copyright Act provides an additional exemption to infringement of copyright. Pursuant to this section it is not an infringement of copyright to reproduce a copyright-protected work, or do any other necessary act, in order to display the work on the premises of the University for the purpose of education or training.

7.2 This exemption extends beyond fair dealing in that the exemption permits the display of more than a short excerpt of a work. There is however a limitation on the section 29.4(1) exemption. The exemption does not apply, except for the making of a manual reproduction (e.g. on a white board), if copies of the specific work required (or portion of the work you require) are available for sale in Canada within a reasonable time and at a reasonable price, and the copies can be located with reasonable effort.

8.0 Exemption for a Lesson Communicated by Telecommunication

8.1 Section 30.01 of the Copyright Act provides an exemption for the reproduction and use of more than a short excerpt of a work in a lesson that is communicated via telecommunication. This exemption extends beyond fair dealing, as more than a short excerpt of the work can be displayed in the lesson. A lesson would include a lecture, and a presentation (such as a PowerPoint presentation) presented in a classroom. This exemption allows the exemption in 29.4 of the Copyright Act, provisions that allow for the reproduction of more than a short excerpt of a copyright protected work for purposes of display for purposes of education or training, to be emulated in the
online environment, albeit with some stringent restrictions. Section 30.01 of the Copyright Act also allows for the exemptions in Section 29.5 of the Copyright Act, provisions that allow for the performance of copyrighted works at an educational institution for purposes of education and training, to be emulated in an online environment, albeit with some stringent restrictions.

8.2 For the exemption in section 30.01 of the Copyright Act to apply, recordings or reproductions of the lesson must be destroyed within 30 days after the day on which the students enrolled in the course of which the lesson forms part have received their final course grades. This would mean that all copies of a presentation stored on an LMS pursuant to the exemption in section 30.01 must be destroyed, and not merely rendered inaccessible to students, within the 30 day period.

8.3 The following activities are permissible under section 30.01 of the Copyright Act:

(i) The exemption permits the posting of a lecture or other presentation for a course that contains a work displayed in the classroom pursuant to the exemption in section 29.4(1) to a LMS stored on a secure server or other device. It also permits communicating the presentation to students in the course of study in which the presentation was given. The communication can be through posting the presentation to a course website on an LMS stored on a secure server or other device that is only accessible by students enrolled in the course of study for which the presentation was made.

(ii) The exemption also permits the recording of a lecture or classroom presentation in which more than a short excerpt of a work is displayed pursuant to the exemption in section 29.4(1) and permits communicating the recording to students in the course of study in which the recording was made. The communication can be through posting a recording to a course website stored on an LMS in the same circumstances described above with respect to a classroom presentation.

(iii) Finally, the exemption would permit the recording of a lecture or classroom presentation during which an audiovisual work or sound recording was performed and the communication to students enrolled in the course of study for which the lecture or presentation was given, including a communication through a course website on an LMS to such students in the same circumstances described above with respect to a classroom presentation. A further requirement with respect to an audiovisual work and a sound recording is that the audiovisual work and the sound recording is not an infringing copy or the person responsible for the performance had no reasonable grounds to believe that the audiovisual work or sound recording was an infringing copy.

9.0 Relationship between Fair Dealing and the Exemption for Displaying a Work and the Exemption for a Lesson Communicated by Telecommunication

9.1 Fair dealing and the exemptions for displaying a work and communicating a lesson via telecommunication are distinct and separate exemptions under the Copyright Act.

9.2 Appendix R30.04A (the Fair Dealing Policy) may apply in circumstances in which these latter two exemptions also apply. For example, an instructor may post to his or her course in the university LMS a classroom presentation which includes a short excerpt of a copyright-protected work. The instructor can rely on the Appendix R30.04A for posting the classroom presentation rather than the exemption for a lesson and not have to destroy the classroom presentation within the 30 day period as required by section 30.01.

9.3 If, on the other hand, the classroom presentation contains more than a short excerpt of a copyright-protected work, the instructor cannot rely on the Appendix R30.04A and instead must ensure that the exemption for a lesson applies and that the classroom presentation is destroyed within the 30 day period as required by section 30.01.

9.4 Because of the destruction requirement, an instructor may prefer to use only a short excerpt according to Appendix R30.04A (the Fair Dealing Policy) rather than the exemption for a lesson communicated by telecommunication. Therefore, the instructor would only include a short excerpt in a classroom presentation that is to be posted.