

Administrative Procedure 3270

Use of Copyright Protected Work

Board Governance Policy Cross Reference: [1, 12, 14](#)

Administrative Procedures Cross Reference:

Form Cross Reference:

Legal/Regulatory Reference:

[Copyright Act \(Canada\)](#)

[Fair Dealing Guidelines \(CMEC\)](#)

[Manitoba Regulation 213/96 \(Copyright Regulation\)](#)

[The Education Administration Act, section 3.1\(2\)](#)

The Interlake School Division (ISD) respects the provisions of the [Copyright Act](#) in all Division and school instruction and activities. As such, copyright-protected materials should not be used without the permission of the copyright owners unless the use is permitted by the Copyright Act.

The Copyright Act and recent court decisions allow educators to use copyright-protected works for some educational purposes without having to ask for copyright permission or pay copyright royalties. For example, teachers and students are allowed to use materials that are publicly available on the Internet for their educational pursuits; news or news commentary programs may be recorded for later viewing by students; audiovisual works may be screened or played in the classroom; and lessons may be recorded to be made available for viewing by students at a later time.

“Education” is also considered an allowable purpose within the Copyright Act’s fair dealing provision. Fair dealing permits the use of copyrighted material without permission or payment of royalties as long as the material is used for an allowable purpose and is considered “fair” according to six factors set out in a Supreme Court decision in 2004: the purpose, character, and amount of the dealing; alternatives to the dealing; the nature of the work; and the effect of the dealing on the market for the work.

Schools in Manitoba are required to follow the [Fair Dealing Guidelines](#) established by the Council of Ministers of Education, Canada (CMEC), Copyright Consortium Steering Committee.

Fair Dealing Guidelines

The fair dealing provision in the [Copyright Act](#) permits use of a copyright-protected work without permission from the copyright owner or the payment of copyright royalties. To qualify for fair dealing, two tests must be passed.

First, the “dealing” must be for a purpose stated in the Copyright Act: research, private study, criticism, review, news reporting, education, satire, and parody. Educational use of a copyright-protected work passes the first test.

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 schools and post-secondary educational institutions.

These guidelines apply to fair dealing in non-profit Kindergarten to Grade 12 schools and post-secondary educational institutions and provide reasonable safeguards for the owners of copyright-protected works in accordance with the Copyright Act and the Supreme Court decisions.

1. Teachers, instructors, professors, and staff members in non-profit educational institutions may communicate and reproduce, in paper or electronic form, short excerpts from a copyright-protected work for the purposes of research, private study, criticism, review, news reporting, education, satire, and parody.
2. Copying or communicating short excerpts from a copyright-protected work under these [Fair Dealing Guidelines](#) for the purpose of news reporting, criticism, or review should mention the source and, if given in the source, the name of the author or creator of the work.
3. A single copy of a short excerpt from a copyright-protected work may be provided or communicated to each student enrolled in a class or course:
 - as a class handout;
 - as a posting to a learning or course-management system that is password protected or otherwise restricted to students of a school or post-secondary educational institution;
 - as part of a course pack.
4. A short excerpt means:
 - up to 10 per cent of a copyright-protected work (including a literary work, musical score, sound recording, and an audiovisual work);
 - one chapter from a book;
 - a single article from a periodical;
 - an entire artistic work (including a painting, print, photograph, diagram, drawing, map, chart, and plan) from a copyright-protected work containing other artistic works;
 - an entire newspaper article or page;
 - an entire single poem or musical score from a copyright-protected work;
 - containing other poems or musical scores;

- an entire entry from an encyclopedia, annotated bibliography, dictionary, or similar reference work.
5. Copying or communicating multiple short excerpts from the same copyright-protected work with the intention of copying or communicating substantially the entire work is prohibited.
 6. Copying or communicating that exceeds the limits in these [Fair Dealing Guidelines](#) may be referred to a supervisor or other person designated by the educational institution for evaluation. An evaluation of whether the proposed copying or communication is permitted under fair dealing will be made based on all relevant circumstances.
 7. Any fee charged by the educational institution for communicating or copying a short excerpt from a copyright-protected work must be intended to cover only the costs of the institution, including overhead costs.

Access Copyright

Access Copyright, formerly Cancopy, is a non-profit organization founded by Canadian writers and publishers, which acts on behalf of artists, writers, and publishers, to grant permission to copy beyond that permitted by the Copyright Act, and collects a tariff fee which is given back to the artist, writer, or publisher. The school tariff includes works published both in and outside of Canada.

At the present time, Manitoba Education is not operating under an Access Copyright school tariff. There may be future tariffs to cover the copying of material not allowed by the Copyright Act, such as individual sheet music, but these have not been negotiated yet.