

*Policy No. & Title:* **A204: COPYRIGHT**

*Effective:* 2023-01-04

*Next Review:* 2028-01-04

*Policy Sponsor:* Director, Library and Media Services

*Approvals:* 1984-02-20/SA-83-11, 2007-12-05/AC-07-03, 2011-04-27/SLC-10-18; 2023-01-04

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## 1. PURPOSE

The purpose of this policy is to guide Fanshawe College community members' usage of works that are protected by copyright so as to promote users' rights and prevent infringement.

## 2. DEFINITIONS

*Copyright:* In relation to a work, refers to the sole right to produce or reproduce the work or any substantial part thereof in any materials form whatever, to perform the work or any substantial part thereof in public or, if the work is unpublished, to publish the work or any substantial part thereof, in addition to other economic and moral rights granted by the Copyright Act.

*Copyright Services Office:* The office within the Library Learning Commons which provides copyright-related services and resources to Fanshawe College community members.

*Fair Dealing:* A right granted to users by the Copyright Act which permits the fair usage of copyright-protected works without a licence for the purpose of research, private study, education, parody, satire, review, criticism, or news reporting. The character of the usage, the nature and amount of the work, the availability of alternatives, and the effect of the usage on the work are to be considered when determining whether a user's dealing with a work will be fair. The usage of copyright-protected works within the scope of fair dealing does not constitute infringement.

*Moral Rights:* An author's rights to protect the integrity of their work, to be associated with the work as its author by name or pseudonym, as well as the right to remain anonymous, and the right to be attributed whenever their work is used.

*Perceptual Disability:* A disability that prevents or inhibits a person from reading or hearing a literary, musical, dramatic or artistic work in its original format.

## 3. POLICY

Fanshawe College respects the economic rights of copyright owners, the moral rights of authors, and the users' right of fair dealing through adherence to the Canadian Copyright Act.

### 3.1. Scope

This policy applies to all Fanshawe community members; students, employees, clients, contractors, visitors and/or any other attendees of Fanshawe campuses, and affiliated facilities.

### 3.2. Principles

3.2.1. The usage of copyright-protected works, unless permitted through the grant of a license by the appropriate copyright owner or by an applicable exception granted by the Copyright Act, is prohibited.

3.2.2. The usage of copyright-protected works in accordance with a licence or an exception from the Copyright Act must comply with Standard 1: Use of Copyright-Protected Works, be approved by the Copyright Services Office, or follow the advice of legal counsel that has been approved by Fanshawe College.

### 3.3. Administration

3.3.1. Managers shall ensure that Fanshawe College employees have sufficient training and knowledge in order to comply with this policy.

3.3.2. Employees who, in the course of their work, provide reproduction or reprographic services in any medium are authorized by Fanshawe College to ask for evidence that a service request will not contravene copyright legislation, licence agreements, or the guidelines outlined within this policy. In the absence of such evidence, the service may be declined.

3.3.3. Fanshawe College reserves the right to take any measures deemed necessary to ensure compliance with this policy.

3.3.4. Associated addenda to this policy may be amended by authority of the Policy Sponsor.

## 4. REFERENCES

### Legislation

*Copyright Act, RSC 1985, c C-42*

## 5. ADDENDUM

Standard 1: USAGE OF COPYRIGHT-PROTECTED WORKS

Standard 2: FAIR DEALING

Standard 3: COPYRIGHT NOTICE FOR PUBLIC REPROGRAPHIC DEVICES

Standard 4: ALTERNATE FORMATS FOR PEOPLE WITH PERCEPTUAL DISABILITIES

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*Policy No. & Title:* A204: COPYRIGHT

*Addendum:* **Standard 1: USAGE OF COPYRIGHT-PROTECTED WORKS**

*Issued by:* Director, Library and Media Services

*Effective:* 2023-01-04

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## 1. PURPOSE

The purpose of this standard is to guide Fanshawe College community members' usage of copyright-protected works. Note that community members may contact the Copyright Services Office with any questions about copyright at any time.

## 2. DEFINITIONS

*Attribution:* With respect to the usage of a work, an acknowledgement which states the work's title, the name of its author, and any other information relevant to the usage of the work such as that the work is used by permission of the copyright owner or by grant of a license.

*Commercially available:* A work or other subject matter is considered commercially available if it is available on the Canadian market within a reasonable time, for a reasonable price, and may be located with reasonable effort. Commercially available may also be a licence to reproduce the work, perform the work in public, or communicate the work to the public by telecommunications is available from a collective society within a reasonable time, for a reasonable price, and may be located with reasonable effort.

*Fair Dealing:* A right granted to users by the *Copyright Act* which permits the fair usage of copyright-protected works without a licence for the purpose of research, private study, education, parody, satire, review, criticism, or news reporting. The character of the usage, the nature and amount of the work, the availability of alternatives, and the effect of the usage on the work are to be considered when determining whether a user's dealing with a work will be fair. The usage of copyright-protected works within the scope of fair dealing does not constitute infringement.

*Open licence:* A licence assigned to a copyright-protected work by a copyright owner that does not need to be requested or negotiated by a user and permits the usage of the openly licensed work in accordance with the terms of the license. A Creative Commons license is an example of an open license.

*Public domain:* Works that are not protected by copyright because copyright owners have waived their economic rights or because the term of copyright protection has lapsed. Works that exist within the public domain can be used freely and without restrictions, but attribution is still required.

*Substantial use:* Substantiality is not defined by the *Copyright Act* but the term has been interpreted as having both quantitative and qualitative attributes. The substantial use of a copyright-protected work can involve the use of a substantial **amount** of the work or the use of a component which is of substantial **importance** to the work. The character of the use, the amount of the work, the nature of the work, and the effect of the use on the work should be considered when determining whether the use of a work is fair or substantial.

### 3. GUIDELINES

Before using a work, or a portion of it, consult the categorized guidelines below to determine if your usage is fair, permitted, or if a license is required. For both legal and scholarly purposes, attribution (by way of a credit line or citation) is required whenever a work, or a portion of it, is used.

#### 3.1. Works in the public domain

The term of copyright protection provided by Canadian law is currently the lifetime of the author plus 50 years. When that term of copyright protection lapses, the work is considered to exist within the public domain. As such, the work can be used freely and without restrictions, but attribution is still required. If a copyright owner has waived their economic rights, then their work is considered to exist within the public domain and can be used freely and without restrictions, but attribution is still required. Copyright owners who have waived their economic rights may affix a Creative Commons Public Domain license to their works which can help users identify whether a work can be used and to what extent. Please proceed to 3.2, 3.3, 3.4, or 3.5 if the work is protected by copyright if it does not exist within the public domain.

#### 3.2. Open licences

If copyright owner has openly licensed a work, that work is protected by copyright but can be used within the scope of the open license's terms and without permission from the copyright owner. Attribution will be required and the terms of the open license should be consulted to determine whether they are compatible with the intended use of the work. Please proceed to 3.3, 3.4, or 3.5 if an open license has not been affixed to the work.

#### 3.3. Exceptions from the *Copyright Act*

The *Copyright Act* contains a number of exceptions that permit the use of copyright-protected works by educational institutions for educational purposes. Such exceptions permit reproduction for instruction and testing, some performances, use within lessons, and the use of publicly accessible online content. The exceptions include conditions and restrictions and the use of a copyright-protected work in accordance with an exception requires attribution. Please proceed to 3.4 or 3.5 if an exception, with its conditions and restrictions, is not compatible with the intended use of a copyright-protected work.

#### 3.4. Fair dealing

The use of a copyright-protected work is not an infringement of copyright if the work is used within the scope of fair dealing. Please refer to Standard 2: Fair Dealing to determine whether the use of a work would be considered fair or if a license will be required. If a license is required, please proceed to 3.5 and consult with the Copyright Services Office.

#### 3.5. Licences available through Fanshawe College

Both access to and the licensed use of copyright-protected works, such as articles and ebooks, may already be provided by Fanshawe College through the Library Learning Commons. Check the [CLEAR](#) database for details about licenses, subscriptions, and the permitted uses of copyright-protected works. A copyright-protected work may be used if the intended use is compatible with the available license.

Publishers often provide instructor's guides, slide decks, and banks of test questions when a textbook is adopted for a course. The provision of these materials based on the adoption of the textbook is an arrangement that is regarded as a license agreement. The use of the materials is permitted in order to facilitate the course in which the textbook has been adopted. When a textbook is not longer adopted or is replaced by another textbook, especially a different publisher's textbook, the use of the provided materials must cease unless a license for their use is obtained. Please consult with the Copyright Services Office if a license is required.

If a copyright-protected work cannot be used in accordance with an exception from the Copyright Act or within the scope of fair dealing and there is no license currently in place, please consult with the Copyright Services Office for assistance with obtaining a license.

### 3.6. Insubstantial use

If the usage of a copyright-protected work is insubstantial, it may not constitute copyright infringement. Please consult with the Copyright Services Office to determine whether the usage of a copyright-protected work is insubstantial.

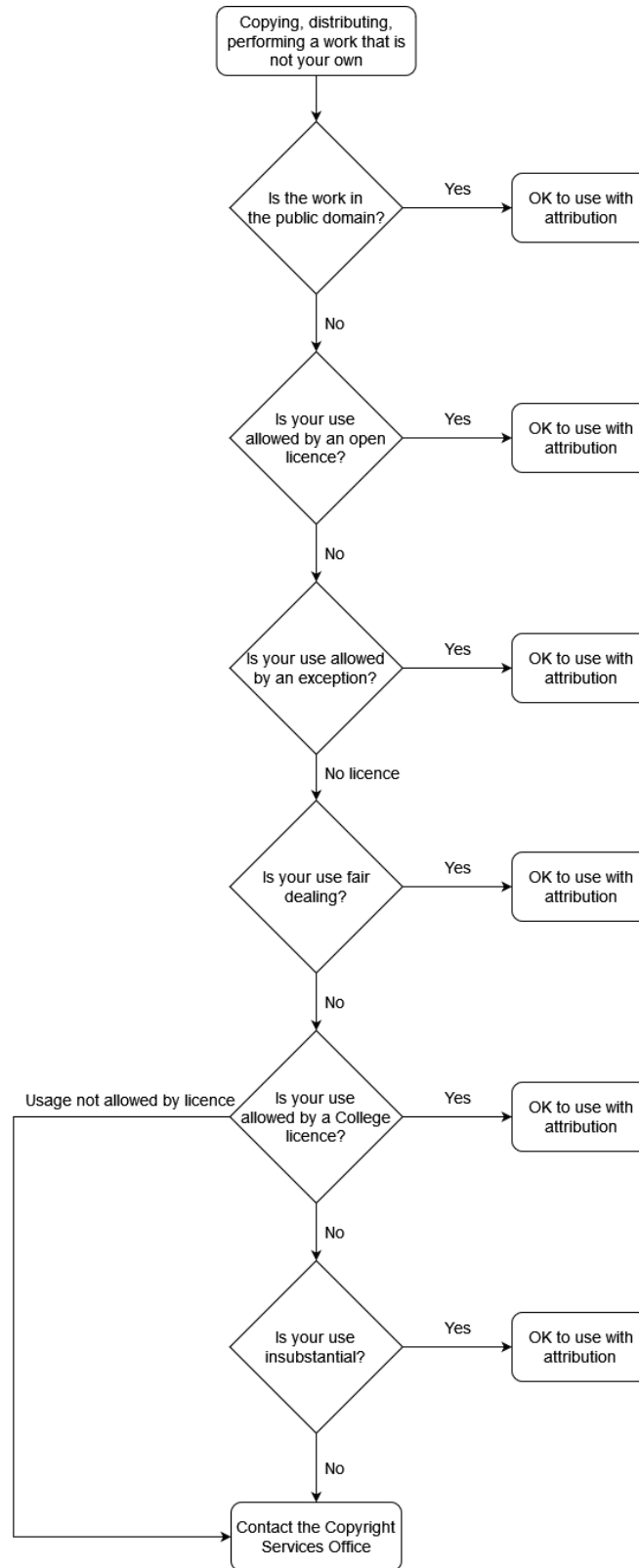
### 3.7. Licence and Fee Negotiation

In the absence of a licence for the usage of a particular copyright-protected work by a Fanshawe College community member, all available exceptions to copyright will be considered before a license is negotiated or any fees are paid.

The College reserves the right to deny the negotiation of a licence and the payment of any fees for the usage of a copyright-protected work requested by a Fanshawe College community member.

## **4. VISUAL GUIDELINE**

The following visual representation of the guidelines which may be used by Managers and other Fanshawe College community members. Please note that this visual guideline is a secondary reference and is not a substitute for the actual guidelines.



*Policy No. & Title:* A204: COPYRIGHT

*Addendum:* **STANDARD 2: FAIR DEALING**

*Issued by:* Director, Library and Media Services

*Effective:* 2023-01-04

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## 1. PURPOSE

The purpose of this standard is to provide Fanshawe College community members with a guide to assist in the determination of whether a copyright-protected work can be used within the scope of fair dealing.

## 2. DEFINITIONS

*Technological Protection Measure:* any technology, device or component that controls access to a work or a sound recording and whose use is authorized by the copyright holder, or restricts the doing of any act that is one of the exclusive rights of the copyright owner.

## 3. BACKGROUND

The fair dealing exceptions under sections 29, 29.1, and 29.2 of the *Copyright Act* outline the purposes for which the use of a copyright-protected work is likely to be considered fair and would not require a license from a copyright owner or the payment of fees. This policy applies a reasonable safeguard for copyright owners and users of copyright-protected works in accordance with the *Copyright Act* and copyright-related judicial decisions from the Supreme Court of Canada. In order for the dealing with a copyright-protected work to be considered fair, two tests must be passed.

First, the dealing with a copyright-protected work must be for one of the following purposes as outlined in the fair dealing exceptions from *Copyright Act*: research, private study, education, parody, satire, review, criticism, or news reporting. The dealing with a copyright-protected work for educational purposes passes this first test.

Second, the manner in which the copyright-protected work is dealt with must be determined to be fair. There are six factors that are to be considered when determining whether the dealing with a copyright-protected work is fair:

- the *purpose* of the dealing (addressed by the first test),
- the *character* of the dealing,
- the *amount* of the dealing,
- the *availability of alternatives* to the dealing,
- the *nature* of the copyright-protected work, and
- the *effect* of the dealing on the copyright-protected work.

## 4. GUIDELINES

### 4.1. Purposes

Fanshawe College community members may reproduce, distribute, and communicate, in paper or electronic form, short excerpts from copyright-protected works for the purpose of research, private study, criticism, review, news reporting, education, parody, or satire.

### 4.2. Attribution

Reproducing, distributing, and communicating short excerpts of copyright-protected works for the purpose of research, private study, criticism, review, news reporting, education, parody, or satire must mention the source of the short excerpt and, if mentioned in the source, the name of the creator of the short excerpt.

### 4.3. In a course

A single copy of a short excerpt from a copyright-protected work may be reproduced and distributed or communicated to each student enrolled in a class or course:

4.3.1. As a paper handout;

4.3.2. As a posting to a learning or course management system within a secure network that is password-protected or otherwise accessible only by teachers, instructors, professors, staff members, and students of an educational institution, or;

4.3.3. As part of a course pack.

### 4.4. Definition of “short excerpt”

A “short excerpt” means:

4.4.1. Up to 10% of a copyright-protected work (literary works, musical scores, sound recordings, and audiovisual works are considered 'copyright-protected works').

4.4.2. A single chapter from a book.

4.4.3. A single article from a periodical.

4.4.4. An entire artistic work (paintings, prints, photographs, diagrams, drawings, maps, charts and plans are considered 'artistic works').

4.4.5. An entire newspaper article or page.

4.4.6. An entire single poem or musical score from a copyright-protected work containing other poems or musical scores.

4.4.7. An entire entry from an encyclopedia, annotated bibliography, dictionary, or similar reference work.

### 4.5. Serial copying

Reproducing and distributing or communicating multiple short excerpts from the same copyright-protected work, with the intention of reproducing and distributing or communicating substantial or multiple portions of the copyright-protected work, is prohibited.



**4.6. Technological protection measures**

The circumvention of technological protection measures, in order to reproduce, distribute, or communicate short excerpts of copyright-protected works, is prohibited.

**4.7. Exceptions**

Reproduction, distribution, and communication that exceeds the limits outlined in this document may be referred to the Copyright Services Office for evaluation. An evaluation of whether the proposed reproduction and distribution or communication is within the scope of fair dealing will be based on all relevant circumstances.

**4.8. Fees and cost recovery**

Any fee charged by the educational institution for reproducing, distributing, or communicating short excerpts of copyright-protected works must be intended to cover only the costs of the institution, including overhead costs.

**5. REFERENCES**

Colleges and Institutes Canada Fair Dealing Guidelines

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*Policy No. & Title:* A204: COPYRIGHT

*Addendum:* **STANDARD 3: COPYRIGHT NOTICE FOR PUBLIC REPROGRAPHIC DEVICES**

*Issued by:* Director, Library and Media Services

*Effective:* 2023-01-04

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## 1. PURPOSE

The purpose of this standard is to encourage Fanshawe College community members' compliance with this policy while using public reprographic devices on the premises of Fanshawe College.

## 2. COPYRIGHT NOTICE

The following notice is to be affixed on or near all public facing photocopiers, printers, scanners, and any other devices that can be used for reprographic production.

### **Attention: Fanshawe College Community Members**

The Canadian Copyright Act governs the making of photocopies or other reproductions of copyright material. Certain copying may be an infringement of copyright. Fanshawe College is not responsible for infringing copies made by the users of these machines.

Please contact [copyright@fanshawec.ca](mailto:copyright@fanshawec.ca) with any questions regarding copyright.

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*Policy No. & Title:* A204: COPYRIGHT

*Addendum:* **STANDARD 4: ALTERNATE FORMATS FOR PEOPLE WITH A PERCEPTUAL DISABILITY**

*Issued by:* Director, Library and Media Services

*Effective:* 2023-01-04

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## 1. PURPOSE

The purpose of this standard is to guide Fanshawe College staff and faculty through the exceptions from the Copyright Act which permit the reproduction of copyright-protected works in alternate formats that are accessible to Fanshawe College community members with perceptual disabilities.

## 2. DEFINITIONS

*Perceptual disability:* A disability that prevents or inhibits a person from reading or hearing a literary, musical, dramatic or artistic work in its original format.

## 3. GUIDELINES

### 3.1. Reproduction of alternative formats

All Fanshawe College community members with a perceptual disability, those acting on behalf of or at the request of someone with a perceptual disability, or a member of Fanshawe's faculty or staff acting for the benefit of someone with perceptual disabilities may:

- Reproduce a literary, musical, artistic or dramatic work, other than a cinematographic work, in a format specially designed for persons with a perceptual disability;
- Reproduce a sound recording or fix a performer's performance of a literary, musical, artistic or dramatic work, other than a cinematographic work, in a format specially designed for persons with a perceptual disability;
- Translate, adapt or reproduce in sign language a literary or dramatic work, other than a cinematographic work, in a format specially designed for persons with a perceptual disability;  
or
- Perform in public a literary or dramatic work, other than a cinematographic work, in sign language, either live or in a format specially designed for persons with a perceptual disability.

### 3.2. Exceptions

The above does not apply if the work is commercially available in a format specially designed to meet the needs of the person with a perceptual disability.

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