



Notes on Fair Dealing in Canada

Canada's fair dealing is similar to that in UK and Australia. The Canadian Copyright Act allows users to make copies of portions of works for "research and private study." The term "educational purposes" is not included in the act.

The following criteria must be considered in evaluating what constitutes "fair dealing" in Canada:

1. **The Purpose of the Dealing** Is it for research, private study, criticism, review or news reporting? It expresses that "these allowable purposes should not be given a restrictive interpretation or this could result in the undue restriction of users' rights."
2. **The Character of the Dealing** How were the works dealt with? Was there a single copy or were multiple copies made? Were these copies distributed widely or to a limited group of people? Was the copy destroyed after its purpose was accomplished? What are the normal practices of the industry?
3. **The Amount of the Dealing** How much of the work was used? What was the importance of the infringed work? Quoting trivial amounts may alone sufficiently establish fair dealing. In some cases even quoting the entire work may be fair dealing.
4. **Alternatives to the Dealing** Was a "non-copyrighted equivalent of the work" available to the user? Could the work have been properly criticized without being copied?
5. **The Nature of the Work** Copying from a work that has never been published could be more fair than from a published work "in that its reproduction with acknowledgement could lead to a wider public dissemination of the work - one of the goals of copyright law. If, however, the work in question was confidential, this may tip the scales towards finding that the dealing was unfair."
6. **Effect of the Dealing on the Work** Is it likely to affect the market of the original work? "Although the effect of the dealing on the market of the copyright owner is an important factor, it is neither the only factor nor the most important factor that a court must consider in deciding if the dealing is fair." A statement that a dealing infringes may not be sufficient, but evidence will often be required.

The Association of Universities and Colleges of Canada (AUCC) works very hard in advocating that making copies of a periodical article, newspaper article, short story, poem, play or essay contained in a book for the purposes of "research and private study" is fair dealing.

It has been noted in the Concordia University Libraries Copyright Guide that "In Canada, fair dealing, as defined by the Copyright Act is more restrictive than the fair use provisions in the United States, particularly in regards to education and teaching." As an example, one can show films or videos in a classroom in the United States without obtaining permission. In Canada, public performance rights must be acquired.

Sources used:

Wikipedia:

http://en.wikipedia.org/wiki/Fair_dealing#Fair_dealing_in_Canada

Concordia University Libraries – Copyright Guide:

<http://library.concordia.ca/help/copyright/>

(see section on "Fair Dealing (Canada) vs. Fair Use (US)")



For reference, see also:

National Gallery of Canada (Terms and Conditions):

<http://www.national.gallery.ca/english/370.htm>

Finding and Using Images Online (Simon Fraser University – Vancouver, BC):

<http://www.lib.sfu.ca/researchhelp/publicationtypes/images.htm>