

Fair Dealing Policy: Learning Management Systems

This document provides guidance on the application of the Fair Dealing Policy for Universities (“Fair Dealing Policy”) to a Learning Management System (“LMS”).

Guiding Principle

A guiding principle behind the Fair Dealing Policy is that copying or communicating a copyright-protected work under the Policy is not to substitute for the purchase of the work that was copied or communicated. In order to respect that principle, it is necessary to implement certain safeguards for the holders of copyright in the works copied for inclusion in an LMS.

Definition of Short Excerpt

Section 4 of the Fair Dealing Policy defines a short excerpt as follows:

4. A short excerpt means:
 - (a) up to 10% of a copyright-protected work (including a literary work, musical score, sound recording, and an audiovisual work)
 - (b) one chapter from a book
 - (c) a single article from a periodical
 - (d) an entire artistic work (including a painting, print, photograph, diagram, drawing, map, chart, and plan) from a copyright-protected work containing other artistic works
 - (e) an entire newspaper article or page
 - (f) an entire single poem or musical score from a copyright-protected work containing other poems or musical scores
 - (g) 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.

Inclusion of Short Excerpts in an LMS

Under the Fair Dealing Policy a short excerpt of a copyright-protected work may be posted to an LMS. The LMS may deliver a short excerpt of a copyright-protected work stored in its system, or it may deliver such an excerpt from a separate electronic reserve system. Additional guidance for the posting of short extracts of audiovisual works, and musical works is set out in the application documents that discuss those works.

Safeguards

In order to respect the guiding principle discussed above and to ensure that the short excerpts are only accessible by those who intend to use the excerpts for one of the fair dealing purposes, the following safeguards must be met:

1. The LMS must be operated by or under the control of the university. The Fair Dealing Policy does not apply to the posting of short excerpts to a wiki, a blog or a service offered by a third party such as Dropbox, RefWorks or Mendeley.
2. The LMS must be stored on a secure server or other device (ie: password protected).
3. The short excerpts posted to the LMS must only be accessible by students enrolled in the course, unit or program of instruction for which the excerpts have been posted and by faculty members or university staff that require access to the LMS.
4. To give students an option of how to access course materials the same short excerpt may be made available to students through an LMS or in a course pack. However, no more than a short excerpt from a work from across all editions of a copyright-protected work may be copied and made available to students during a specific course of instruction irrespective of the format in which it is made available (e.g. in paper or electronic form).
5. When content is uploaded or posted to an LMS in a centralized process involving university administrative staff, those staff should identify such content to the TRU Intellectual Property Office, where the content will be reviewed to ensure that:

- (a) copies of copyright-protected works are posted to the LMS in accordance with the Fair Dealing Policy and this guidance document; or
 - (b) that the posting of the copies does not infringe copyright for other reasons.
6. When content is uploaded or posted to an LMS by faculty members or their staff, faculty and staff should refer to TRU's Fair Dealing Policy and guidance documents to verify what materials can be posted on the LMS without infringing copyright, and for what reason. The faculty or staff are required to identify the reason that they are entitled to post each work or extract (e.g. permission obtained from the copyright holder, public domain, fair dealing, other exemption under the *Copyright Act* (specify) or other (specify)). For certain content posted to the LMS (e.g. classroom presentations containing extracts from a number of works) multiple reasons may apply. Faculty members or their staff who post content prepared by a student on an LMS should confirm that the content does not include copies of copyright-protected works that infringe copyright.

Including Materials Beyond Short Excerpts on an LMS

If an extract to be included on an LMS, that is requested per s. 5 above, exceeds the limitations of a short excerpt as set out in the Fair Dealing Policy, the TRU Intellectual Property Office will secure transactional permission for making the copy from the copyright holder or from the holder's licensing agent.

In addition, the university may include on an LMS copies of copyright-protected works for which the university has a licence with the publisher or aggregator, as long as the terms of the licence permit the making of copies for inclusion on an LMS. A copyright-protected work made available to the university under a licence with a publisher or aggregator that prohibits the use of extracts on an LMS cannot be copied and included in an LMS. The terms and conditions of the licence take precedence over the Fair Dealing Policy.