

Application of the Fair Dealing Policy for Universities to Musical Works and Sound Recordings

This document provides guidance on the application of the Fair Dealing Policy for Universities (the “Fair Dealing Policy”) and the exemption under section 29.5 of the *Copyright Act* to the use of musical works and sound recordings by the university.

A. Copyright in Musical Works

Copyright subsist in every musical work. The subsistence of copyright does not depend on whether or not the musical work is published. The Fair Dealing Policy applies both to published and unpublished musical works.

Musical works include both a musical composition and lyrics. A composer and a lyricist may own copyright in their separate contributions to a musical work. The term of copyright in the musical composition is for the life of the composer and a period of 50 years from the end of the year in which the composer died. The term of copyright in the lyrics is for the life of the lyricist and a period of 50 years from the end of the year in which the lyricist died. As an example, although copyright in the musical composition may have expired, copyright may still subsist in the lyrics.

It is common for new arrangements to be prepared for musical works that are in the public domain. It is likely that copyright will subsist in a new arrangement. If so, permission from the copyright holder may be required to use the new arrangement. Any copyright in the new arrangement will not affect the ability to use the original musical work.

B. Copyright in Sound Recordings

Copyright subsists in a sound recording separate and apart from any copyright that may subsist in a musical work, the performance of which is embedded in the sound recording. The term of copyright in a sound recording is different from the term of copyright in a musical work. In general, the term of copyright in a sound recording is 50 years after the end of the calendar year in which the sound recording was first recorded.

C. Sourcing of Musical Works

Some musical works are sourced from distributors who provide their musical works under licence agreements that may limit the circumstances in which their works may be copied or communicated. Any provision in a licence agreement that restricts the circumstances in which a musical work may be copied or communicated takes precedence over the Fair Dealing Policy. It is therefore necessary to abide by the terms of the licence agreement.

D. The Fair Dealing Policy

The Fair Dealing Policy permits faculty members and administrative staff to copy short excerpts of copyright-protected musical works and sound recordings and to communicate short excerpts of copyright-protected musical works and sound recordings by telecommunication to students for research, private study and educational purposes, among other purposes. A musical work typically takes the form of a musical score published as sheet music or in a book containing a number of musical scores. Communicating a short excerpt of a musical work or a sound recording by telecommunication to students includes emailing the excerpt to students or making the excerpts available to students on a learning management system.

A sound recording may be protected by a digital lock that restricts access to the recording or prohibits copying of the recording. The Fair Dealing Policy does not apply if it is necessary to circumvent a digital lock in order to copy a short excerpt of a copyright-protected sound recording. It is however permissible to reproduce a short excerpt under the policy using an audio recording device when the recording is being played on audio equipment (e.g. through a stereo system) where the playing of the recording does not require circumventing a digital lock or where the playing of the recording resulted from lawfully decrypting the recording.

Short Excerpt

The definition of a short excerpt in section 4 of the Fair Dealing Policy includes the following:

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) ...

(f) an entire single poem or musical score from a copyright-protected work containing other poems or musical scores ...

provided that in each case, no more of the work is copied than is required in order to achieve the allowable purpose.

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Under sections 1 and 4(a) of the Fair Dealing Policy a faculty member or administrative staff may copy or communicate up to 10% of a single musical work that is in the form of sheet music. However, if the musical work appears in a book containing other musical works, under sections 1 and 4(f) of the Fair Dealing Policy a faculty member or administrative staff may copy or communicate the entire musical work.

Under sections 1 and 4(a) of the Fair Dealing Policy a faculty member or administrative staff may copy or communicate up to 10% of a sound recording.

The Fair Dealing Policy would permit a faculty member or administrative staff to make a copy of a short excerpt of a copyright-protected musical work or a short excerpt of a sound recording for inclusion in a classroom presentation or in a learning management system. For more information about the application of the Fair Dealing Policy to copyright-protected works posted on a library management system see the document entitled Application of the Fair Dealing Policy for Universities to Learning Management Systems to be found here

http://library.ucalgary.ca/sites/library.ucalgary.ca/files/learning_management_systems.pdf

Safeguards

In order to protect the interests of holders of copyright in copyright-protected musical works and sound recordings, the copying and communicating of those works and recordings must comply with the following safeguards:

1. Copies of short excerpts of copyright-protected musical works and sound recordings are only to be provided to students enrolled in a course of study and to faculty members and administrative staff of the university.

2. Copies of short excerpts of copyright-protected musical works and sound recordings are only to be communicated to students enrolled in a course of study and to other faculty members and administrative staff of the university.

An exception to these safeguards relates to a faculty member sharing a copy of such works or recordings with faculty members or students within another university with whom the faculty member is engaged in collaborative research. For more information on faculty members copying and communicating copyright-protected works for research purposes see the document entitled Application of the Fair Dealing Policy for Universities to Teaching and Research by University Faculty to be found here

http://library.ucalgary.ca/sites/library.ucalgary.ca/files/teaching_and_research_by_univers_ity_faculty.pdf

E. The Exemptions for Performing a Musical Work and a Sound Recording

The Fair Dealing Policy does not apply to the performance in public of a musical work or a sound recording. Instead, faculty members and administrative staff can rely on the exemptions in section 29.5 of the *Copyright Act*. Section 29.5(a) permits an educational institution or a person acting under its authority (e.g. a faculty member) to perform live in public, primarily by students of the educational institution, a musical work, among other works, on the premises of the university for educational or training purposes before an audience consisting primarily of students, instructors or any person who is directly responsible for setting the curriculum. Section 29.5(b) permits an educational institution or a person acting under its authority to perform in public a sound recording which embodies a musical work. The same restrictions as to the premises, purposes and audience applicable to musical works also apply to sound recordings. In addition, the sound recording must either not be an infringing copy or the person responsible for the performance must have no reasonable grounds to believe that it is an infringing copy.

The exemptions in section 29.5(a) and (b) apply to all or any part of a musical work or a sound recording. For example, although only a short excerpt of a copyright-protected musical work and sound recording may be copied or communicated under the Fair Dealing Policy, an entire

musical work and sound recording may be performed under the exemptions in sections 29.5(a) and 29.5(b).