Administrative Procedures Memorandum

#: APO 011

Copyright and the Board

DATE OF ISSUE: August 23, 1999

MEMO TO: All Staff
FROM: Director of Education

PURPOSE
It is the policy of the Waterloo Catholic District School Board to comply with the Fair Dealing Guidelines as developed by the Council of Ministers of Education Canada (CMEC) Copyright Consortium. The Waterloo Catholic District School Board will communicate the Fair Dealing Guidelines to all school locations on an annual basis in order to ensure that all staff understand the obligations of the school board in accordance with the Copyright Modernization Act.

REFERENCES
Copyright Modernization Act. Assented 29 June 2012.
Supreme Court of Canada. Alberta (Education) v. Canadian Copyright Licensing Agency (Access Copyright), 2012 SCC 37

- APS010 - Guidelines for the Selection of Materials For Central and School Libraries
- APS 017 – Acceptable Use of Computer Technology and the Internet
- Waterloo Catholic District School Board. Mission Statement
- Fair Dealing Guidelines – Council of Ministers of Education Canada (CMEC) Copyright Consortium

FORMS
N/A

APPENDICES
Appendix A: Exceptions under the Copyright Act for Persons with a “Perceptual Disability”
Appendix B: Ontario Film Classifications
COMMENTS AND GUIDELINES

1. Fair Dealing Guidelines

Background

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 K-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.

Guidelines

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:
   a. as a class handout
   b. 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
   c. as part of a course pack

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
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 person designated by the WCDSB 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.

The Fair Dealing Guidelines do not describe absolute limits. Copying or communicating a copyright-protected work within the prescribed limits will, according to the advice of legal counsel, almost certainly be fair. Copying beyond those limits may or may not be fair.

School Boards, along with their staff and students must be mindful that some copying may not fall within the parameters set out in the guidelines. When such copying occurs, two options may exist. First, permission to copy can be sought from the copyright holder. Second, a royalty must be paid the copyright holder.

2. Board Documents & Board as Copyright Holder

Copyright affects how WCDSB employees write documents, and make them available to other institutions.

- Include a clear copyright statement indicating the source, and get permission to use any articles, books, videos, etc.
- Acquire permission to use logos, images, cartoons, photographs, etc. in works you are writing.

The WCDSB, as an employer, retains copyright for works created by an employee in the course of their employment.

3. Films/DVDs/Digital Videos

Schools must purchase a public performance license if they are using films/DVDs/videos for purposes not included in the fair dealing guidelines. Some examples that are outside of the fair dealing guidelines: family movie nights, community events, cultural events, fundraising events. An “entertainment license” is available through Audio Cine Films or VEC/Criterion Pictures.

WCDSB may enter into agreements on behalf of its schools for public performance rights for non-educational use of films/DVDs/videos. Please check with school library staff or the Resource Centre for further information.

Films/DVDs/videos are to be used in the classroom solely for educational purposes. All films/DVDs/videos must be previewed by the teacher to determine their educational value and suitability for classroom viewing.

- Elementary schools are strongly encouraged to limit their choice of films/DVDs/videos for use in classrooms or other educational settings to films/DVDs/videos considered appropriate for viewing by all ages. The Ontario Film Review Board classifies films of this nature as General. It may be confusing as the ratings between a film and a video release of the same film are not always the same. DVDs often contain extras which are often unrated. The MPAA rating in the United States is also sometimes different, e.g. both Star Wars Revenge of the Sith, and Harry Potter and the Goblet of Fire is PG in Ontario, but PG-13 in the United States. Videos sometimes list both
ratings. Ontario Film Review Board ratings are available on Learn360 under “Teacher Resources”.

- “G” and “ratings exempt” titles are allowed to be shown in schools without reservation, while PG and 14A titles, even if only a part is used, requires the principal’s permission, and a note sent home.

- A film/video/DVD with a classification other than “G” and “ratings exempt” may be shown in elementary schools if in the opinion of the principal/teacher it contains sufficient educational and/or spiritual values which support the philosophy, values and purpose of a Catholic school system. The principal/teacher must advise parents of elementary students when a film/video/DVD with these classifications is to be shown in the classroom.

- A film/video/DVD with a classification other than “G” and “ratings exempt” may be shown in secondary schools if in the opinion of the principal/teacher it contains sufficient educational and/or spiritual values which support the philosophy, values and purpose of a Catholic school system.

- The classification system used in Ontario is set out in the Ontario Theatres Act. The Ontario Film Review Board classifies and approves films publicly exhibited and distributed in the province under the authority of the Ontario Theatres Act. Refer to Appendix B.

- **Teachers are encouraged to use the videos purchased by The Resource Centre for the purpose of supporting the curriculum.** The videos may be borrowed from the Resource Centre and/or streamed from Learn 360. The Resource Centre catalogue may be browsed at [http://library.wcdsb.ca/waterloo](http://library.wcdsb.ca/waterloo).

### 4. Use of Music in Schools and Board Departments

For a purpose that is not outlined in the fair dealing guidelines, educational institutions are required to obtain authorization from the copyright owner or a collective authorized to represent the owner, e.g. SOCAN, the copyright collective that administers licenses for the public performance of music.

In Fall 2012, the WCDSB signed a one year tariff 55 licensing agreement with SOCAN for secondary schools that covers some uses of music in a school.

The following examples are not covered by the SOCAN license. A license may be purchased from SOCAN to cover them. Please contact Margaret Campbell 1-800-55SOCAN (Nov 2012) to arrange a SOCAN license.

- school dances
- at school sporting events
- while people are on hold when they telephone the school
- an event where the admission fee is intended to make a profit
- on school premises for no other reason than as background (e.g., *in the classroom, cafeteria, halls, over the PA system, at school events such as fairs, carnivals, sociocultural events*)

Any contract between a school and disc jockeys must include a statement that – “The disc jockey assumes the responsibility for obtaining all necessary licenses and that all licensing fees are paid prior to the performance

Examples of uses of music in a school setting which are not covered by the SOCAN agreement include:

- **In a play performed live.** In this case the schools performing the play must either purchase the rights from a theatrical agent (i.e. Rodgers and Hammerstein would hold the rights for works such as “The Sound of Music” OR purchase the director’s score and a specified number of students copies for works such as Granny Awards, from a music store in order to have the rights to perform the work)
- **In performances on school premises by outside performers.** In this case, copyright authorization is the responsibility of the performer.

- **In activities held in school facilities that are rented or provided free of charge to outside groups.** In this case, copyright authorization is the responsibility of the outside group.
Exceptions under the Copyright Act for Persons with a “Perceptual Disability”

An exception permits the use of a work protected by copyright without the consent of the copyright owner and without the payment of royalties. Copyright laws all over the world aim for a balance between (a) the rights of creators to be paid for and to control the use of their works and (b) the needs of users who want access to material protected by copyright. This balance is created by providing creators with legal “rights” and then limiting those rights through “exceptions” for the benefit of certain users. Persons with a “perceptual disability” is one of those user groups. Section 32 provides persons with a “perceptual disability” with an exception permitting certain activities, which may be undertaken without infringing copyright.

“Persons with a “perceptual disability” as a category of beneficiary is defined in section 2:

“Perceptual disability” means a disability that prevents or inhibits a person from reading or hearing a literary, dramatic, musical or artistic work in its original format, and includes such a disability resulting from (a) severe or total impairment of sight or hearing or the inability to focus or move one’s eyes; (b) the inability to hold or manipulate a book; (c) an impairment relating to comprehension.

Section 32 has been updated and provides that “it is not an infringement of copyright for a person with a perceptual disability, for a person acting at the request of such a person, or a non-profit organization acting for the benefit of such a person to make a copy of a dramatic, musical or literary work made in certain alternate formats, such as Braille and talking books; translate, adapt or reproduce a literary or dramatic work (except a cinematographic work) in sign language;

- Publicly perform a literary or dramatic work (except a cinematographic work) either live or in a format specially designed for persons with a perceptual disability.

This exception only applies if the alternate format is not already “commercially available”. “Commercially available” is defined (in section 2 and subsection 32(3)) as meaning available on the Canadian market within a reasonable time, for a reasonable price and with reasonable effort. This information is to be considered solely as a guide and should not be quoted as, or considered to be, a legal authority. It may become obsolete without notice. Authority must be found in the Copyright Act, the Copyright Regulations and in the decisions of the Courts interpreting them.”

Note: The exception to make a copy for one student is transactional, i.e. the copy is made for that student, and must be erased after that student has finished using it. If you wish to keep the copy, you must contact the publisher, and get permission in writing to keep the work in an alternate format, e.g. Braille, digital, sound, etc.
Ontario Film Classification

The Ontario Film Review Board approves and classifies films exhibited and distributed in Ontario according to the classifications set out in the Theatres Act. The Board also approves all advertising associated with those films. The Theatres Act gives all licensing and enforcement responsibilities to the staff of the Theatres Section of the Ministry of Consumer and Commercial Relations.

There are 26 board members (classifiers) in Ontario appointed by the Ontario government and representing a cross section of the community. A rotating panel of three classifiers screens films and rates them according to the guidelines set out in the Theatres Act.

Film and Video Classification System and Guidelines
Film, retail video, and DVDs are rated by the same classification system; however, the Ontario Film Review Board doesn’t require retail videos/DVDs to carry a rating sticker. If you would like to know how the OFRB classified a particular movie for theatrical exhibition, search for the title on their website http://www.ofrb.gov.on.ca/english/default.htm or telephone them at 1-800-268-6024.

The Ontario Film Review Board classifies films and videos according to the following categories:

- **G** – Suitable for all
- **PG** - Parental Guidance is advised.
- **14A** – Persons younger than 14 must be accompanied by an adult.
- **18A** – Persons younger than 18 must be accompanied by an adult.
- **R** – Restricted to persons 18 or older

For a more complete description of each category, refer to http://www.ofrb.gov.on.ca/english/page6.htm

Further, to help viewers make informed choices about films and videos, the Ontario Film Review Board may issue short information pieces, such as "not recommended for children," "coarse language," "violence," which must appear in the film’s advertisements.