

# #12 – FAIR DEALING

ESDC Intellectual Property (IP) Job Aid Series

In copyright law, fair dealing is a **user's right** permitting use of a copyright protected work without permission or payment of copyright royalties.



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The fair dealing exception in the *Copyright Act* allows you to use other people's copyright protected material for the purpose of research, private study, education, satire, parody, criticism, review or news reporting – provided that what you do with the work is 'fair'. If your purpose is criticism, review or news reporting, you must also mention the source and author of the work for it to be fair dealing.

In the US, the principle is known as *Fair Use*. In Canada we must comply with *Fair Dealing* requirements.

## WHEN MIGHT FAIR DEALING APPLY?

Sections 29, 29.1 and 29.2 of the [Copyright Act of Canada](#) define the circumstances under which Fair Dealing may apply as:

<b>Research</b>	Primarily academic research, but can include any type of research
<b>Private Study</b>	A single copy for your own personal use
<b>Education</b>	This may not include federal learning activities
<b>Parody or Satire</b>	Making a social or political point through humour
<b>Criticism or Review</b>	Applies when material is being formally reviewed or critiqued
<b>News Reporting</b>	Reporting on current or historical events

If your planned use falls into one or more of these categories, it *may* qualify. The next step is determining fairness, where factors such as the following are considered:

- Is the use commercial, for education or charity?
- Was attribution given?
- Could a non-copyright alternative have been used?
- Was there a negative impact on the rights holder or the original material?

The uniqueness of the material, the amount and significance of the portion copied as well as the number of copies made and how widely they were distributed are also factors.

There is no authoritative definition of "Fair" until a judge rules it so. Therefore, Fair Dealing should not be used as an alternative to seeking permission.

- **Always seek advice before using the Fair Dealing provision for products that may be widely circulated.**
- **Always give attribution to the rights holder.**

## KEEP RECORDS



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[Public Domain]

- Keep a record of the source location or URL, a complete copy/screenshot of the material/image and a complete copy of the Use Requirements. Include records of any communication with the Copyright owner, if applicable.
- Provide clear information and details around how and where the material will be used and for what purpose. Record the rationale for using the Fair Dealing provision.
- Save all records in a Shared Repository where they can be found later, are accessible to multiple employees and will be kept indefinitely.

**Questions? Refer to the [IPCOE Website](#) or contact the [IPCOE](#) by email.**