

Application of the Fair Dealing Policy for Universities to 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. Those documents may be found here. **[insert URLs]**.

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 (e.g. 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. If content is uploaded or posted to an LMS in a centralized process involving university administrative staff, those staff should review the content posted to the LMS to ensure that copies of copyright-protected works are posted to the LMS in accordance with the Fair Dealing Policy and this guidance document or that the posting of the copies does not infringe copyright for other reasons.
6. If content is uploaded or posted to an LMS by faculty members or their staff, the faculty or staff should be 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. As an alternative, faculty and staff should be informed of what materials can be posted on the LMS without infringing copyright and periodically a random selection of course websites should be reviewed to ensure that the content posted to the LMS does not infringe copyright. As a further alternative, the university administrative staff that centrally manages the LMS should review the content to be uploaded or posted to ensure that the content would not infringe copyright.
7. 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 exceeds the limitations of a short excerpt as set out in the Fair Dealing Policy, transactional permission for making the copy should be secured from the copyright holder or from the holder's licensing agent. Where a transactional permission is used to make a copy of an excerpt onto an LMS, the permission or a record of the permission should be retained (in paper or electronic form).

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.

Guidance to Students

The university does not have control over students who post content to websites including on an LMS or who attach content to emails including emails posted to an LMS. Each semester students should be informed of the university's copyright policy or copyright guidance for students, and for each course website posted to the LMS, each student should confirm that he or she will respect the university's copyright policy or copyright guidance for students and will not post on the LMS works that infringe copyright. In the event that an LMS used by the university does not have the functionality to permit each student to confirm that information and agree that the student will not post on the LMS works that infringe copyright for each course website posted to the LMS, each student should at least annually confirm that information and provide that agreement (e.g. through notification given to the university on obtaining a student number or login ID, or through a similar process). In addition, each course homepage on the LMS should include a prominent notification to the effect that students are required to respect the university's copyright policy and not post on the LMS works that infringe copyright.