1.0 Policy Statement

NAIT is committed to complying with the Copyright Act. This entails respectful adherence to: (i) the rights of copyright-owners; and (ii) the exceptions to those rights as defined in law and supported by the Supreme Court of Canada. Of particular relevance in an educational setting is the Court’s guidance with respect to fair dealing.

2.0 Scope

This policy applies to members of the NAIT Community who use copyrighted material in any media for any NAIT-related activity, regardless of the actual location of the activity.

3.0 Definitions

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
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<tr>
<td>copyright</td>
<td>The right to “reproduce a work, or a substantial part thereof ...” with work spanning literary, dramatic, artistic and musical expressions, provided the conditions for protection are met: i. Ideas are not protected, only the expression thereof. Facts are not protectable material either. ii. The expressions must be original to earn the grant of copyright and (by convention) be fixed in a tangible form. iii. The author must be a resident or citizen of Canada or another treaty-country. While substantial is not defined, it necessarily follows that an insubstantial amount of a copyright-protected work is not eligible for copyright protection.</td>
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<tr>
<td>copyright owner</td>
<td>The person or entity who holds the copyright in a protected work.</td>
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3 The Copyright Act is technologically neutral and hence does not draw distinction among different media.  
4 Section 3.1 of the Copyright Act, above note 1 (emphasis NAIT).
| employee | Refers to any person employed by the Board who is one of the following:  
  i. Covered under the terms and conditions of the collective agreement between NAIT and NAIT Academic Staff Association (NASA);  
  ii. Covered under the terms and conditions of the collective agreement between NAIT and Alberta Union of Provincial Employees (AUPE);  
  iii. Not covered by any collective agreement, and referred to as ‘Management’ and ‘Excluded’;  
  iv. Providing their services on a salaried or hourly basis, whether for continuing education or any other purpose. |
|---|---|
| fair dealing | An exception to copyright; the foremost language as defined in the Copyright Act states: “fair dealing for the purpose of research, private study, education, parody or satire, does not infringe copyright.”
  Conditions apply; see Section 4.3 of accompanying procedure, LC 2.01 – Use of copyright-protected work at NAIT. |
| NAIT Community | Refers to the Board of Governors, management, faculty and staff, contractors, vendors, volunteers, and students. |
| reproduce | To make a copy by, including but not restricted to, photocopying, scanning, printing, downloading, broadcasting, or performing in public. |
| work | A variety of expressive formats eligible for copyright protection including, but not restricted to, books, articles, curriculum and learning materials, CDs, DVDs, musical scores, photographs, paintings, sketches, sound recordings, software, or websites. |

### 4.0 Guiding Principles

1. When using the work of others, NAIT recognizes and respects the contribution of creators and copyright owners to the wellbeing of society.
2. When using the work of others, NAIT recognizes and respects that exceptions to copyright are as important as the rights within.
3. Where copyright permissions/licenses are required, they will be centrally held by NAIT’s Copyright Office.
4. Employees are responsible for their own compliance with copyright law and are supported by NAIT’s Copyright Office.

### 5.0 Other Related Documents

Procedure Document – LC 4.01 – Use of copyright-protected work at NAIT.

**Document History**

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5 Section 29 of the Copyright Act, above note 1.
Appendix A - Fair Dealing Addendum*

Relevance of fair dealing in development of learning materials

In keeping with international norms, the Copyright Act\(^1\) includes various exceptions to the grant of copyright. Exceptions allow for use of copyrighted materials without seeking permission from the copyright owner; among all exceptions, fair dealing has gained significantly in prominence and substance. Drawing from events which began in 2002, three factors serve to confirm that fair dealing is a robust exception and widely accepted by the government and judiciary of Canada: (i) three decisions by the Supreme Court of Canada (spanning 2004–2012) supporting a “large and liberal interpretation” of fair dealing;\(^2\) (ii) amendment of the statutory language of fair dealing to include the purpose of “education;”\(^3\) and (iii) emphatic recognition of fair dealing by the Copyright Board.\(^4\)

Fair dealing is of great assistance when assembling teaching/learning materials. Fair dealing carries two functions: (i) a means to legitimately distribute portions of existing copyrighted works which serve as reference material \(i.e.\) a chapter from a textbook, a journal article, \(etc.\) and (ii) a means to facilitate creation of new works.

While fair dealing spans three sections of the Copyright Act, the relevant language for educational institutions is Section 29: “fair dealing for the purpose of research, private study, education, parody or satire does not infringe copyright.”\(^5\) No further guidance is provided within the Act. But, in 2004 the Supreme Court set the standard for a multi-faceted enquiry to establish fairness.\(^6\) Individuals should examine a proposed use from a variety of factors; educational uses predominantly\(^7\) focus upon two questions: (i) What is the educational merit of using a work? and (ii) How is the work to be used?

With respect to the nature of learning materials developed at NAIT, it is likely that imagery and legal codes/standards will be among the areas of application of fair dealing. Works from both categories should be reproduced with some exactitude; such reproduction is supported under fair

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* Prepared by Meera Nair, Ph.D., Copyright Officer, NAIT


\(^3\) Copyright Modernization Act, Bill C-11, 1\(^{st}\) Session, 41\(^{st}\) Parliament (60 Elizabeth II, 2011).

\(^4\) The Copyright Board amplly demonstrated its support for fair dealing in its decision Statement of Royalties to be Collected by Access Copyright [Provincial and Territorial Governments – 2005-2014] 22 May 2015, para. 213-409 [Statement]; see Meera Nair, Copyright Board Decision, 19 June 2015, on file with the Copyright Office. Furthermore, the Board has for many years emphasized that orphan works (works without known or negotiable copyright owners) were legitimate fodder for fair dealing; see Meera Nair, Orphans at NAIT, (NAIT Copyright Project, White Paper No. 1, 2015), on file with the Copyright Office.

\(^5\) Copyright Act, above note 1, s29.

\(^6\) The Court employed six factors in its assessment of the issue at hand: (i) the purpose of the dealing, (ii) the character of the dealing, (iii) the amount of the dealing, (iv) the alternatives to the dealing, (v) the nature of the work, and (vi) the effect of the dealing upon the market of the work; see CCH, above note 2, para 53-59.

\(^7\) In CCH, the Court also emphasized that the framework of analysis must be malleable; ibid, para. 60. In the context of educational uses, these questions will capture the necessary information.
The NAIT Community is supported by the Copyright Office; members are encouraged to examine a proposed use from the perspective of fair dealing and make sound choices of when copying is appropriate or not.

**Determining if permission is needed for inclusion of copyrighted materials**

Copyright is defined as: “the right to produce or reproduce a work, or any substantial part thereof...” The word *substantial* is not defined; it is a matter of impression. But it necessarily follows that if one is copying an insubstantial amount of work, then copyright does not arise.

In a decision dated to 22 May 2015, the Copyright Board gave added guidance to a measure of substantiality. It stated that, without any examination of the source work at all, it stood to reason that up to 2.5 percent (to a maximum of a few pages) will be insubstantial. Moreover, if a qualitative and quantitative assessment of the work is possible and confirms that a larger quantity of material still constitutes an insubstantial portion of the work, then more material may be taken without authorization.

If the amount under consideration is substantial, then fair dealing deserves consideration. As noted earlier, the two questions which are most pertinent are:

i. What is the educational objective served by inclusion of the material?

ii. How is the work to be used (i.e. in whole or in part, for finite or boundless distribution, for cost or no cost, etc.)?

If the proposed use is beyond that of insubstantial or legitimate unauthorized use, then permission for use can be sought from the copyright owner of the work in question. Members of the NAIT Community should consult with NAIT’s Copyright Office, in a timely manner, when such permissions are required.

**Universality of exceptions**

While Canada is a recognized leader in the world for upholding legitimate unauthorized use through a flexible exception, it is pleasing that other nations are promoting the use of flexible exceptions. Notably, in the United States (which for years was not hospitable to its own exception of fair use) a multitude of decisions have emerged emphasizing the contextual nature of fair use. Also of note are international developments; in 2013, after some 30 years of discussion, member countries of the World Intellectual Property Organization (WIPO) agreed upon a flexible exception to better support the provision of copyrighted materials for visually disabled people.

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8 An exemplar case concerns an exact reproduction of an image (a magazine cover) by a professional newspaper organization. Predating CCH by seven years, this decision relied on a contextual examination of the use in question, in much the same vein as later case law would emphasize. See *Allen v Toronto Star Newspapers Limited* (1997) 36 OR (3d) 201 (Div Ct).

9 *Copyright Act*, above note 1, s3.1.

10 *Statement*, above note 4, para. 177-212. Furthermore, not all content is eligible for protection, i.e. facts or scientific process are not granted protection. “One should first screen out what cannot in law be a substantial part;” see David Vaver, *Intellectual Property Law: Copyright, Patents, Trademarks* (Toronto: Irwin Law, 2011) p.182-183.
