Copyright Basics
Dalhousie University faculty, staff and students are creators of material that is subject to the protections of the Copyright Act. But they are also the users of such material as well. Accordingly, all have both rights and obligations that arise from copyright law as it has been interpreted and applied by the courts.

Copyright, as defined in the Act, in relation to a particular work means the sole right to produce or reproduce the work or any substantial part of it, to perform the work or any substantial part of it in public, and if the work is unpublished, to publish the work or any substantial part of it. Copyright also extends to activities such as adaptation, translation, and telecommunication to the public of a work. The word ‘substantial’ is not defined in the Act nor is the word ‘insubstantial’ which allows for a modicum of freedom to interpret the Act (within reason) when dealing with a copyright protected work.

Copyright protection in Canada lasts for the duration of what can be called the ‘life plus 50’ rule. Generally, a work is protected for the duration of the life of the author and for 50 years following their death.

In general, if a work meets the definition of a copyright protected work, copying the work or any substantial portion will require permission of the copyright owner unless one of a number of specific exceptions in the Act can be applied. These exceptions include the concept of ‘fair dealing’ as well as specific educational exceptions that may be of benefit.

Copyright as Shared Responsibility
As I mentioned earlier, members of the Dalhousie University community can be both users and creators of copyright protected materials.

And, as such, there is a shared obligation between the university and its user groups to ensure that copyright is both respected and complied with while still encouraging innovation and creation of new works. I see it as a symbiotic relationship of sorts, where the parties involved rely upon one another for mutual benefit, in this case, copyright compliance. The Dalhousie Libraries’ Copyright Office was established 3 years ago as the university began on a path towards ensuring ethical and sustainable copying practices are a part of the university. The Copyright Office offers and oversees a range of services to the university community from the eReserve service offered through each of the Dal Libraries to educational sessions (both one on one and to larger groups) on a variety of copyright and intellectual property related topics.

Foundations
And like any good relationship, it requires a solid foundation. For its part, Dalhousie has developed and adopted a set of ‘fair dealing’ guidelines that assist in the decision making process
around copying activities. These guidelines should, in general, be applicable to the considerable range of copying that occurs in the teaching and research activities of the members of our community. Should you encounter a situation that does not appear to be covered, Dal Libraries’ copyright office staff can help.

**Fair Dealing and Copyright**

“Fair Dealing” is an important statutory exception provided within the Act. It permits the limited non-commercial use of copyright protected material without the risk of infringement and without having to seek clearance from copyright holders or pay a royalty.

While the concept of “Fair Dealing” is not explicitly defined in the Act, it has evolved significantly over the last decade through amendments to the Act itself and through specific case law interpreting it. The most recent changes to the Act and ‘fair dealing’ took place in 2012 with the Copyright Modernization Act (2012), which expanded the purposes of fair dealing to include education, parody and satire.

The other existing purposes for ‘fair dealing’ in the Act include Research, Private Study, Criticism or Review and News Reporting. So the inclusion of Education as a purpose greatly expands the availability of the fair dealing exception in the university setting.

**Conducting a Fair Dealing Analysis – Step 1**

To qualify as fair dealing two broad ‘tests’ must be passed. The first test considers the purpose of the dealing. The second focuses on the scope. When applied together these tests help establish degrees of fairness and subsequent use without seeking specific clearance.

In step 1 of the tests, your intended use must be for one of the purposes enumerated in the Act.

- Research
- Private Study
- Criticism
- Review
- News Reporting
- Education
- Parody
- Satire

The use, or dealing, of a copyright protected work for teaching or research at Dal will typically be for research or an educational purpose and thereby passes the first test.

**Fair Dealing Analysis – Step 2**

Moving on to step 2, the Supreme Court of Canada established 6 factors that are relevant in determining whether or not a dealing is more or less fair. These factors are:

- Purpose of the dealing – e.g. commercial or not
- Character of the dealing – multiple copies to many multiple individuals might be less fair; copies destroyed after use?
Amount of the dealing – is it a reasonably necessary amount of the work being used
Nature of the work – status of the work – published, unpublished, confidential
Alternatives to the dealing – Are there copyright free alternatives to the work that would accomplish the same purpose
Effect of the dealing on the work – will it compete with the original or otherwise be a substitute for it?
Relevance of the factors depends entirely on the context. Each instance where this two step test is applied will be unique. No one factor is more important than another. It is also not necessarily the case that each of the factors must be satisfied for a dealing to be fair.

Dal’s Fair Dealing Policy
The university has adopted a Fair Dealing policy and guidelines to provide guidance to faculty, instructors and staff members on when copying and communicating a copyright protected work would fall within the fair dealing exception.

The policy permits faculty, instructors and staff members to copy and communicate, in paper or electronic form, short excerpts from copyright protected works for any of the eight fair dealing purposes. The most important purposes for the university are research, private study and education.

The meat of the policy
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 issue;
   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.

When considering copying or communicating a short excerpt it’s important to note that the most advantageous option may be selected. As examples: if you have two chapters of a book that comprise 10% or less of a book then you may use both chapters; if you have more than one figure that you wish to copy, then the total number of figures you reproduce cannot exceed 10% of the work.
**Teaching, Fair Dealing and the University**

**Faculty may do any of following:**
Provide a copy of the short excerpt to students;
Email a copy of the short excerpt to students;
Post a copy of the short excerpt on an LMS
Include a short excerpt in a coursepack sold to students enrolled in a course of study;
Include a short excerpt in a lecture or classroom presentation;
Display a short excerpt in a classroom

In each case, a copy of the short excerpt may also be provided or made available as required to another faculty member and to university staff.

As a safeguard to protect the interests of copyright holders, the work from which the copy of the short excerpt is taken must be in the lawful possession of the university or faculty member. This would include a work in the library collection or faculty member, borrowed by the university library or faculty member through a document delivery/interlibrary loan service or is copied and communicated to the university or faculty member under fair dealing.

The policy does not permit:
Copying/communicating a work for a lecture or presentation that is open to the public
Systematic copying from the same work with the intention of reproducing the whole of the work

**Research, Fair Dealing and the University**
Under the Fair Dealing policy a copy of a short excerpt may be made for use by a faculty member in conducting research on a specific topic of inquiry or for inclusion in a personal collection of research resources.

The faculty member may share a copy of the excerpt with faculty and students both within the university and within another university with whom the faculty member is engaged in collaborative research.

In sharing the copy the faculty member may email the copy to the students and other faculty member or post the copy to a website on a secure server or other device provided that the website is secured and only accessible by those faculty members and students with whom the faculty member is conducting collaborative research.

Systematic copying from the same work with the intention of reproducing the whole of the work is not permitted.

**Exceptions and Alternatives to using Copyright Protected Works**
Aside from utilizing ‘fair dealing’ which is one of the specific exceptions contained within the Copyright Act, there are a number of others that can also have a positive impact for teaching and research that are separate and distinct from ‘fair dealing’.
If your instance of copying or communicating a copyright protected work falls outside of the Fair Dealing policy and guidelines or does not fall under one of the other specific exceptions in the Act, permission of the copyright holder must be secured.

As an alternative to seeking permission, it may often be advantageous to seek out resources and materials for which copyright no longer exists (public domain materials) or for which permission has already been granted (Creative commons licenced, Open Access materials).

**Displaying a work**
Section 29.4(1) of the Act provides an additional exception to infringement. Under this exception it is not an infringement of copyright to reproduce a copyright protected work, or do any other act necessary, in order to display the work on the premises of the university for the purpose of education or training. It’s important to remember that this exception is distinct and separate from fair dealing in that it permits the display of more than a short excerpt. This does come with a limitation. The exception cannot be applied (except in the making of a manual reproduction, say on a whiteboard, for example) if copies of the work are available for sale in Canada within a reasonable time and at a reasonable price, located at a reasonable effort.

**A Lesson**
Section 30.01 of the Act provides an exception for a lesson. A lesson would include a lecture, and a presentation, such as Powerpoint, presented in a classroom. For the exception to be applied, recordings or reproductions of the lesson must be destroyed within 30 days after the day on which students enrolled in the course have received their final course evaluation. This would mean that all copies of a presentation stored on an LMS pursuant to the exception in section 30.01 must be destroyed, not merely made inaccessible to students within that 30 day window.

The exception would permit the following activities:

- posting a classroom presentation that contains a work displayed in the classroom which then would get posted to a course website on an LMS. It also would permit communicating the presentation to students enrolled in the course. The communication can be through the act of posting the material to the LMS.
- Recording a lecture or classroom presentation in which a copyright protected work is displayed and communicating the recording to students enrolled in the course. The communication can be through the act of posting the material to the LMS.
- Recording a lecture or classroom presentation during which an audiovisual work or sound recording was performed and the communication to students enrolled in the course including communication to students through an LMS. The audiovisual work or sound recording must be legally acquired copies or the person responsible for the communication of the work had no grounds to believe that the work was not an infringing copy.

Fair dealing and the exceptions for displaying a work and a lesson are distinct and separate exceptions under the Act. The Fair Dealing policy may apply in circumstances in which these two exceptions may also apply.
For example, a faculty member may post to his or her LMS coursespace, a classroom presentation which includes a short excerpt of a copyright protected work. The faculty member can rely on the fair dealing policy for posting the presentation rather than the specific exception for a lesson and NOT have to destroy the presentation within that 30 day window that the exception requires.

Should the presentation contain an excerpt greater than the fair dealing policy indicates then the specific exception for a lesson must be applied and subsequently destroyed.

**Exception for works available through the Internet**
Section 30.04(1) of the Act provides an exception to infringement for copying, communicating and performing in public by an educational institution or a person acting under the authority of one, for educational or training purposes of a copyright protected work that is available through the Internet. There are a number of conditions to meet:

- the source must be mentioned (e.g. through a URL, as well as any and all bibliographic information available);
- The work or the website where it is posted is not protected by a digital lock or other measure that either restricts access to the work or restricts copying, communicating or performing the work in public;
- There is no clearly visible notice other than a copyright symbol posted on the website or on the work itself in a prominent and easily located location that prohibits the act being sought to be done;
- the educational institution or person acting under its authority had a reasonable idea or notion that the work was not posted online without the permission of the copyright owner.

Using this exception is preferable to the Fair Dealing policy in that allows the entire work to be copied or communicated, provided that each of the conditions mentioned is met satisfactorily.

**Exception for performing an Audiovisual Work**
The fair dealing policy does not apply to the performance in public of an audiovisual work. Section 29.5 however, does. This specific exception within the act permits an educational institution or a person acting under its authority to perform in public an audiovisual work on the premises of the university for educational or training purposes before an audience consisting mainly of students, instructors or any person directly responsible for setting curriculum. The copy must not be an infringing copy or it must be reasonably believed that it is not. The last update to the copyright act extended this exception to cover not only sound recordings (as was the case before) but also to films/videos. Thus eliminating the need to secure permission to show films in a classroom setting for an educational purpose.
Copyright and Copyright Free alternatives

**Creative Commons**
A set of easy-to-use copyright licenses that provide a simple, standardized way to give the public permission to share and use creative work — on conditions of the choosing of the content creator.

**Open Access**
Open Access is the immediate, online, free availability of research outputs without the severe restrictions on use commonly imposed by publisher copyright agreements. It is definitely not vanity publishing or self-publishing, nor about the literature that scholars might normally expect to be paid for, such as books for which they hope to earn royalty payments. It concerns the outputs that scholars normally give away free to be published – peer-reviewed journal articles, conference papers and datasets of various kinds.

**Public Domain Works**
public domain works are those whose intellectual property rights have expired, have been forfeited, or are inapplicable. Examples include the works of Shakespeare and Beethoven. Copyright in Canada lasts for the life of the author and the 50 years following their death; following that, works enter the Public Domain.

**Open Educational Resources**
Open educational resources (OER) are freely accessible, openly licensed documents and media that are useful for teaching, learning, and assessing as well as for research purposes.
https://www.oercommons.org/