

COPYRIGHT POLICY

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1.0 Introduction

The advance of knowledge, creativity, and innovation builds on the work of others, and an educational institution such as George Brown College requires access to such works in order to fulfill its mission. As a user of others' copyright material, the College wishes to establish policies and practices that respect the rights of other copyright owners. As a creator of copyright material and a copyright owner, the College wishes to protect its intellectual property from unauthorized use. Balancing the rights of copyright owners with the need for access to protected works makes copyright administration within an organization a complex matter.

This complexity has been exacerbated by rapid technological change, the ubiquity of copying devices, and internet access, all of which have made the application of copyright in the digital environment highly challenging. Amendments to Canada's *Copyright Act* that will clarify copyright in the digital environment will take some time to be achieved. In the meantime, it is all the more essential that organizations develop a clear policy to address copyright issues.

1.1 Copyright Policy Goals

This policy aims to achieve the broad goal of respecting the rights of other copyright owners and complying with current copyright law.

The policy also aims to be:

1. Comprehensive, in that it covers all College activities that are affected by copyright,
2. Clear, in that it attempts, to the greatest extent possible, to minimize uncertainty in the application of copyright law to College activities, and
3. Consistent in the College's approach to copyright matters.

1.2 Scope: This policy is limited to the use of copyrighted materials by members of the College community. Excluded from the scope of this policy are matters relating to the College's ownership of copyright, patents and trade marks: these matters are dealt with in the College Policy on Intellectual Property.

1.2.1 Associated Policies: George Brown College subscribes to the Association of Canadian Community College's [ACCC] Fair Dealing Policy, March 2011. [See Appendix B]

1.3 Application: This policy applies to all faculty, staff and students of George Brown College. All employment guidelines and consultant agreements and other relevant policies will be written in conformity with this policy and the application of Canadian copyright law.

2.0 George Brown College as a User of Copyright Material

The use of material created by others is essential to the teaching and learning mission of the College. The following policies ensure that, in carrying out this mission, faculty, staff and students will respect the rights of other copyright owners and comply with current copyright law.

2.1 Responsibility: The Office of the Director of Educational Resources is responsible for the development, implementation, and maintenance of this policy. Specifically, the Office will:

- Maintain and revise existing policies and procedures as required; develop written policies
- and procedures in emerging areas related to copyright
- Ensure that records of licensing agreements and permissions that are received by faculty

- are maintained in accordance with College records management procedures
- Maintain records of all permissions to copy obtained by college faculty and staff
- Maintain all records required by licensing agreements and submit all reports required by licensors
- Advise faculty, staff and students on copyright questions
- Provide advice and assistance to faculty and staff about obtaining copyright permissions
- Keep up-to-date on copyright matters
- Establish good communication processes to maintain awareness of relevant copyright activities throughout the College

2.2 Use of copyrighted materials in teaching

2.2.1 General

- Assistance or advice may be sought from the Copyright Compliance Manager/Copyright Librarian.
- It is the responsibility of the faculty member teaching a course, to obtain the appropriate authorization(s) in the name of George Brown College to use copyright materials that are not covered by the Access Copyright and other licensing agreements signed by the College. It is further the responsibility of the faculty member to ensure that the Compliance Manager/Librarian receives a copy of all permissions received.
- Where a copyright owner has authorized the use of a work, a record of the terms of the authorization must be kept by the faculty member. The record should include the parties to the agreement, the date of the agreement, the title of the work(s) used, the use(s) authorized, the duration of the agreement, and any conditions.
- Sources must be indicated whenever material created by others is incorporated into teaching materials. However, simply acknowledging the source is not a substitute for obtaining any necessary authorizations from the copyright owner.
- In addition to economic copyrights (e.g., the right to reproduce, publish, broadcast, etc.), the Act also provides the author with moral rights. Moral rights protect the reputation of the author and the integrity of the work, and include:
 - the right of attribution (the author's right to have his or her name associated with the work),
 - the right of association (the author's right to prevent the use of the work in association with a cause or organization that would be prejudicial to the author's honour or reputation), and
 - the right of integrity (the right to prevent changes to the work that would be prejudicial to the author's honour or reputation).

Using or changing a work in ways that are prejudicial to the author's honour or reputation is an infringement of the moral rights of the author. Such changes require the author's permission. Unlike economic copyrights, moral rights always belong to the author. They cannot be assigned or licensed; they can only be waived, i.e., the author agrees not to exercise his or her moral rights. It is very difficult to determine what an author will consider to be prejudicial to his or her reputation or honour.

- Except where collective, employment or other contractual agreements provide specific indemnification, the College will not provide assistance or protection relating to charges arising from copyright infringement.

2.2.2 Single Copies made for research, private study, review, criticism or news reporting [Fair Dealing]

- Single copies made under the fair dealing provisions of the Copyright Act are subject to the Association of Canadian Community Colleges' Fair Dealing Policy. See Appendix B.

2.2.3 Copies for distribution or projection in class

The College has a licence with Access Copyright¹ that permits:

- making photocopies of published works, e.g., books or articles, for distribution to students (either in the form of coursepacks or handouts), and
- making copies of published works, e.g., books or articles, for projection to the class using an overhead, slide, or LCD projector.

The licence includes a number of limitations and conditions. Consult the Copyright Compliance Manager/Copyright Librarian for the details of the licence.

Coursepacks

Coursepacks are collections of photocopies of published works, e.g., books or articles that are assembled and *sold* to students at the beginning of the term. The copying is done by the contracted service provider, which operates the College's duplication services. However, the faculty member teaching the course is responsible for assembling the materials to be included in the coursepack, providing a record of its contents as required by the licence, and submitting it to the provider of the college's duplication services. The service provider will obtain any necessary permissions for copying that is outside the scope of the Access Copyright licence (including works in digital form); their booklet *Coursepack Guidelines* provides further details. Consult the Copyright Compliance Manager/Copyright Librarian for the details of the licence.

Handouts

- Handouts are photocopies of published works, e.g., books or articles that are distributed to students during the course *at no charge*. The faculty member teaching the course is responsible for assembling the materials to be copied, obtaining any necessary permissions for copying that is outside the scope of the Access Copyright licence, and ensuring that the Compliance Manager/Copyright Librarian receives a copy of all permissions received. Consult the Copyright Compliance Manager/Copyright Librarian for the details of the licence and assistance in obtaining permission to copy where needed.

Copies for projection in class

- The Access Copyright licence permits the making of copies of published works, e.g., books or articles, for projection to the class using an overhead, slide, or LCD projector. The faculty member teaching the course is responsible for assembling the materials to be copied, obtaining any necessary permissions for copying that is outside the scope of the Access Copyright licence, and ensuring that the Compliance Manager/Librarian receives a copy of all permissions received. Consult the Copyright Compliance

¹ The Access Copyright licence also permits making photocopies of published works for use by administrative staff of the College.

Manager/Copyright Librarian for the details of the licence and assistance in obtaining permission to copy where needed.

The College also has obtained licences for a number of electronic databases of articles, reports, abstracts, etc. The terms of these licences vary. Making copies of works from these databases is subject to the terms of each particular licence. Consult the Copyright Compliance Manager/Copyright Librarian for the details of these licences.

2.2.4 Videos/Films/DVDs/Computer Software

Reformatting & Captioning

Copying all or part of a video into a digital format (e.g., as a DVD or a CD-ROM) for any purpose, including into a learning management system and on the Website, is not permitted without first obtaining the permission of the copyright owner. This also includes the captioning of videos and DVDs and clips placed into a learning management system and on the Web, for purposes of accessibility. The Accessible Media Coordinator is available to provide advice and assistance in obtaining permissions and/or finding alternative captioned resources.

Copying

- Videos that are available for purchase may not be copied for back-up purposes. [As a not-for-profit library, the LLC may copy a video work within its permanent collection if the original is rare or unpublished and at the risk of becoming lost as long as the item is not commercially available. Commercially available refers to the item being available on the Canadian market within a reasonable time and for a reasonable price and may be located with reasonable effort.]
- Subject to the software licence, a single copy of a computer program may be made for backup purposes provided that the back-up copy is destroyed immediately when ownership is transferred to another individual or organization.

Public Performance Rights

Videos, films, and DVDs that are shown in the classroom must have non-theatrical public performance rights. In the following cases, the College has acquired licences that permit showing videos/films/DVDs in the classroom.

- All videos/films/DVDs in the George Brown Library Learning Commons were purchased with public performance rights, and may be shown in the classroom without seeking further copyright permission and without reporting their use.
- Feature films listed in the catalogues of Audio Cine Films and Criterion Pictures (available at www.acf-film.com and www.criterionpic.com) may be shown in the classroom as long as the showing is reported on the “Feature Films Shown in Classroom” form available on the Library Learning Commons web site. Video/DVD copies of feature films that are covered by these agreements may be rented or purchased from a video store or borrowed from a public library for classroom showing.
- Videos/DVDs that are rented or purchased from a video store or borrowed from a public library that are not covered by these agreements may not be shown in a classroom without obtaining the public performance rights in advance. The faculty member teaching the course is responsible for obtaining any necessary authorization for showing such

videos/DVDs in a classroom, and ensuring that the Compliance Manager/Copyright Librarian receives a copy of all permissions received.

2.2.5 Television or radio broadcasts

Canada's *Copyright Act* permits an educational institution to copy and/or present a radio or television broadcast in the classroom for educational or training purposes and not-for-profit purposes in the following circumstances and subject to the conditions specified below.

- An educational institution can show a radio or television broadcast in the classroom at the time of broadcast without the permission of the broadcaster.
- An educational institution can make a single copy of a news program or a news commentary program (excluding documentaries) at the time it is broadcast and show it in the classroom any number of times within the year following the date of initial broadcast, without the permission of the broadcaster. After a year, the educational institution must either destroy the copy, or pay royalties for making the copy and for any subsequent performances of the material.
- An educational institution can make a single copy of any work at the time it is broadcast and keep it for 30 days to decide whether or not it will be used in the classroom. If the copy is retained for more than 30 days, royalties must be paid for making the copy. If the copy is shown in the classroom, royalties must be paid for the public performance.

It is the responsibility of the faculty member teaching the course to ensure that the Compliance Manager/Copyright Librarian receives a copy of all permissions received. The academic division will be responsible for the budgeting and payment of any necessary royalties. Rights may be cleared through the Educational Rights Collective of Canada (ERCC), which represents the interests of copyright owners of television and radio programs when these programs are reproduced and performed in public by educational institutions.

2.2.6 Digital Copying/Copying of Digital Works

Copying of selected text, images, sounds, or multi-media components of all other sources (for purposes such as the distribution of physical copies, or incorporation into products such as WebCT, and similar learning management systems may be done in the following situations. In all cases, the source must be acknowledged.

- If you have obtained the written permission of the copyright owner.
- If a copyright statement on the source authorizes you to do so. Your use may be subject to certain conditions that are specified in the copyright statement, for example, that the work can be used for research or private study, or for educational purposes, but not for commercial use.
- If you are using only an insubstantial part. It is not easy to determine what is "insubstantial." Courts have established that such a determination depends not just on the quantity copied but also upon the significance of the part used in relation to the total work. A quantitatively small part of a work that constitutes the heart of the work, such as a few recognizable notes from a popular song, or a key sentence from a speech or essay, would be considered substantial.
- If your use falls under the fair dealing provisions of Canada's Copyright Act and the Association of Canadian Community Colleges' Fair Dealing Policy, March 2011. [See Appendix B.] Consult the Copyright Compliance Manager for a determination as to whether the making of copies is fair.

Fair dealing

The Canadian *Copyright Act* permits fair dealing for the purposes of research, private study, criticism, review, or news reporting. Fair dealing should not be confused with the much broader American concept of "fair use". **It is important to note that use of a work for educational purposes does not fall within fair dealing.** The Supreme Court of Canada has identified the following factors to be used to determine whether a particular activity is fair. The cumulative effect of all six factors must be taken into account.

- The purpose of the use. Besides falling into one of the five purposes named in the statute (research, private study, criticism, review, or news reporting), certain uses (e.g., academic research) may be seen as more fair than (say) research for commercial use. The Library Learning Commons facilitates the limited copying of copyrighted works for the sole purpose of research or private study. Patrons are reminded to follow the posted guidelines. The provision of copies of copyrighted materials by the Library is limited to the purposes of research or private study and is further limited to single copies for an individual.
- The character of the dealing or how the work was used. For example, making a single copy that was destroyed after it was no longer needed would likely be seen as more fair than making and distributing multiple copies. A recent Supreme Court of Canada decision indicates that making multiple copies of the same work or wide dissemination of copies to multiple individuals (as would be the case in placing copyrighted materials into a learning management system) might be considered "unfair" and therefore, an infringement of copyright, unless the permission of the copyright owner has been obtained.
- The amount of the work used. "Fair" dealing would take into account such factors as using no more than the amount needed to achieve the purpose, and using a small rather than large portion (both in terms of the quantity used and in terms of the qualitative significance of the portion used in relation to the entire work).
- Whether there are any reasonable alternatives to the use of the work, such as substituting a non-copyrighted work, or paraphrasing the work, etc.
- The nature of the work used. For example, using works that have not been published, or works of fiction, or works that are confidential would be considered less fair than using factual or non-fiction works, published works, or works that are not confidential.
- The extent to which the "new" work that incorporates the electronic source competes with the market for the original work.

2.2.7 Video/Audio recording and real time captioning of guest speakers

Video- or audio-recording or real-time captioning of guest speakers requires their consent in advance of the recording and/or reproduction of a real-time captioned transcript for purposes of dissemination in any format. The Permission to Record authorization form will include permission for real-time captioning and specify the permitted uses of the transcript.

2.2.8 Use of new technologies in teaching

Advice provided by Learning Innovations and Academic Development (LIAD) and the Library Learning Commons (LLC) to faculty using new technology for teaching should routinely include information about copyright compliance.

2.2.9 Teaching students about copyright

Where copyright issues are an important aspect of professional practice, information about copyright compliance will be incorporated into all relevant courses. Similarly, Library Instruction sessions provided to students will reinforce with students the need and tools available for the proper citation of sources used in their assignments.

Faculty who see students using infringing copies of copyright protected works in class should advise students that:

- a) [s]he should not have made the copy,
- b) [s]he should refrain from making any future copies,
- c) materials protected by copyright cannot be copied unless permission has been obtained, and
- d) [s]he should purchase the book in future.

Similarly, staff observing students making infringing copies of copyright protected works on public access photocopiers should similarly draw these facts to the attention of the student.

2.3 Use of copyrighted materials by students

2.3.1 General

- Assistance or advice may be sought from the Copyright Compliance Manager/Copyright Librarian.
- In addition to economic copyrights (e.g., the right to reproduce, publish, broadcast, etc.), the Act also provides the author with moral rights. Moral rights protect the reputation of the author and the integrity of the work, and include:
 - the right of attribution (the author's right to have his or her name associated with the work),
 - the right of association (the author's right to prevent the use of the work in association with a cause or organization that would be prejudicial to the author's honour or reputation), and
 - the right of integrity (the right to prevent changes to the work that would be prejudicial to the author's honour or reputation).

Using or changing a work in ways that are prejudicial to the author's honour or reputation is an infringement of the moral rights of the author. Such changes require the author's permission. Unlike economic copyrights, moral rights always belong to the author. They cannot be assigned or licensed; they can only be waived, i.e., the author agrees not to exercise his or her moral rights. It is very difficult to determine what an author will consider to be prejudicial to his or her reputation or honour.

In general, consideration must be given to the nature of the student's use and manipulation of visual works to determine if the copyright owner's moral rights have been violated. Work produced for a classroom assignment for a professor may carry limited risk of legal action. However, student work that is created initially as a classroom assignment but published on the College's or on the student's personal website may increase the risk of legal action, if appropriate permissions are not obtained.

- It is not easy to determine precisely the situations in which students must obtain the copyright owner's permission for the use of a work. Generally speaking, incorporating

quotations of textual material into written assignments does not require the permission of the copyright owner. However, for assignments that involve the copying and manipulation of visual works, such as paintings, sculptures, photographs, and the like, the permission of the copyright owner is required. See section 2.3.3 and Appendix B, Section 10 for further guidance on the application of fair dealing to particular situations.

- Where a copyright owner has authorized the use of a work, a record of the terms of the authorization must be kept by the student, including the parties to the agreement, the date of the agreement, the title of the work(s) used, the use(s) authorized, the duration of the agreement, and any conditions.
- Sources must be indicated whenever others' ideas or material created by others are incorporated into student assignments. Not to do so constitutes plagiarism, which is a form of academic dishonesty (see Ch. IX of the College's *Academic Policies, Guidelines & Codes of Conduct*).
- The College will not provide protection or assistance relating to charges arising from copyright infringement.

2.3.2 Library holdings

Photocopies of printed library holdings may be made in accordance with the terms of the Access Copyright licence. The details of the licence are available from the Copyright Compliance Manager/Copyright Librarian.

Making copies of articles, reports, abstracts, etc. contained in electronic databases in the library computers is subject to the terms of each particular licence. The terms of these licences vary. The details of the licences are available from the Copyright Compliance Manager/Copyright Librarian.

Making copies of entire books contained in electronic databases is not permitted without first obtaining the permission of the copyright owner.

2.3.3. Digital Copying/Copying of Digital Works

Selected text, images, sounds, or multi-media components of all other sources may be copied and incorporated into student assignments in the following situations. In all cases, the source must be acknowledged.

- If you have obtained the permission of the copyright owner.
- If a copyright statement on the source authorizes you to do so. Your use may be subject to certain conditions that are specified in the copyright statement, for example, that the work can be used for research or private study, or for educational purposes, but not for commercial use.
- If you are using only an insubstantial part. It is not easy to determine what is "insubstantial." Courts have established that such a determination depends not just on the quantity copied but also upon the significance of the part used in relation to the total work. A quantitatively small part of a work that constitutes the heart of the work, such as a few recognizable notes from a popular song, or a key sentence from a speech or essay, would be considered substantial.

- If your use falls under the fair dealing provisions of the Canadian Copyright Act and the Association of Canadian Community Colleges' Fair Dealing Policy, March 2011. [See Appendix B]. Consult the Copyright Compliance Manager for a determination as to whether the making of copies is fair.

Fair dealing

The Canadian *Copyright Act* permits fair dealing for the purposes of research, private study, criticism, review, or news reporting. Fair dealing should not be confused with the much broader American concept of "fair use". **It is important to note that use of a work for educational purposes does not fall within fair dealing.** The Supreme Court of Canada has identified the following factors to be used to determine whether a particular activity is fair. The cumulative effect of all six factors must be taken into account.

- The purpose of the use. Besides falling into one of the five purposes named in the statute (research, private study, criticism, review, or news reporting), certain uses (e.g., academic research) may be seen as more fair than (say) research for commercial use. The Library Learning Commons facilitates the limited copying of copyrighted works for the sole purpose of research or private study. Patrons are reminded to follow the posted guidelines. The provision of copies of copyrighted materials by the Library is limited to the purposes of research or private study and is further limited to single copies for an individual.
- The character of the dealing or how the work was used. For example, making a single copy that was destroyed after it was no longer needed would likely be seen as more fair than making and distributing multiple copies. A recent Supreme Court of Canada decision indicates that making multiple copies of the same work or wide dissemination of copies to multiple individuals (as would be the case in placing copyrighted materials into a learning management system) might be considered "unfair" and therefore, an infringement of copyright, unless the permission of the copyright owner has been obtained.
- The amount of the work used. "Fair" dealing would take into account such factors as using no more than the amount needed to achieve the purpose, and using a small rather than large portion (both in terms of the quantity used and in terms of the qualitative significance of the portion used in relation to the entire work).
- Whether there are any reasonable alternatives to the use of the work, such as substituting a non-copyrighted work, or paraphrasing the work, etc.
- The nature of the work used. For example, using works that have not been published, or works of fiction, or works that are confidential would be considered less fair than using factual or non-fiction works, published works, or works that are not confidential.
- The extent to which the "new" work that incorporates the electronic source competes with the market for the original work.

2.4 Library/Learning Commons (LLC) Practices

2.4.1 Acquisition of videos/DVDs

- All videos and DVDs acquired will include non-theatrical performance rights.
- Videos and DVDs will be acquired with the closed captioning included. Alternatively, the College will obtain the necessary authorization for the College to add captioning.

2.4.2 Library Reserves

- Copies made by a staff or faculty member for library reserve and electronic copies made by a member of the LLC staff from Published Works for a student of the College is governed by the Association of Canadian Community Colleges' Fair Dealing Policy. See Appendix B.
- Linking to the contents of the full text databases is subject to the terms of the licences, which often vary. Consult the Copyright Compliance Manager/Copyright Librarian for the details of the licence in question.

Faculty members are responsible for obtaining any necessary written permissions from the copyright owner prior to placing or requesting that digital content be placed on any College server including the learning management system servers such as Blackboard/WebCT and LLC servers, and for providing the Copyright Compliance Manager/Copyright Librarian with copies of the authorizations. The College is not responsible for any infringing content posted by faculty members to its server.

2.4.3 Inter-library loan/Document Delivery

- The Access Copyright licence permits the making of copies of published works in response to inter-library loan requests from other institutions, subject to certain conditions. Further copying of photocopies of published works received from other institutions in response to inter-library loan requests is not permitted. The details of the licence are available from the Copyright Librarian.
- Copies made by the LLC from Published works for a patron of the library under the fair dealing provisions of the Canadian Copyright Act are governed by the Association of Canadian Community Colleges' Fair Dealing Policy, March 2011. See Appendix B.

2.4.4 Educating students and staff about copyright

The LLC staff plays an important role in educating students, faculty and staff about copyright issues in the following ways:

- Incorporating copyright training in LLC bibliographic instruction sessions
- Ensuring that appropriate signs, posters, etc. informing users about limits on copying are posted on or near photocopiers, printers, scanners, etc.
- Ensuring that the LLC web page contains accurate and up-to-date information about copyright issues

2.4.5 Copyright Compliance Manager/Copyright Librarian's role

The Copyright Compliance Manager/Copyright Librarian is responsible for the following copyright matters:

- Advising faculty, students, and staff about copyright questions, including obtaining copyright permissions
- Assisting College faculty and staff in obtaining permission to copy from copyright owners and maintaining permission records.
- Knowing the details of the College's licence agreements with database providers, copyright collectives, etc.
- Maintaining records and submitting reports of usage, etc. as required by the terms of the licences
- Raising awareness of copyright issues among faculty, students and staff
- Keeping up-to-date on copyright matters

2.5 Use of student work

2.5.1 Copyright in works prepared by students in fulfillment of College course requirements

The copyright in works prepared by students in fulfillment of College course requirements is owned by the student. Accordingly, the student has the right to control further uses of his/her work.

Students work may not be used for purposes other than that for which it was assigned by the faculty member teaching their course(s) namely, for evaluation purposes, without the written permission of the student.

In instances where the College wishes to make use of student work, e.g. for marketing, fundraising or other specified purposes, the student will be asked to sign a waiver authorizing the limited use of the work. The waiver will be explicit in listing the specific uses to which the work will be used.

2.5.2 Copyright in works created by students as part of an employment contract

The copyright in works created by students as part of an employment contract with the College and who receive remuneration for the works they produce as part of their employment contract is owned by the College.

SOURCES FOR FURTHER INFORMATION

Copyright Act and Regulations

Copyright Legislation and Commentary 2004-5 (updated annually) (Toronto: Butterworths, 2004). Includes the text of the Act and the related regulations. The statute and regulations are also available at <http://laws.justice.gc.ca/en/C-42/index.html>

Normand Tamaro, *The 2004 Annotated Copyright Act* (updated annually) (Toronto: Carswell, 2004)

Government Agencies

The Department of Canadian Heritage web site contains a variety of information about current policy and emerging issues. <www.pch.gc.ca/progs/ac-ca/progs/pda-cpb/index_e.cfm>.

The Canadian Intellectual Property Office administers Canada's intellectual property. Their web site <<http://cipo.gc.ca>> is a useful place to find general information about copyright, including a series of circulars on particular aspects of copyright.

The Copyright Board web site includes a list of copyright collectives that administer copyright for various categories of works and links to copyright organizations.
<www.cb-cda.gc.ca/collectives-e.html>

Print Sources

Jean Dryden, *Demystifying Copyright: A Researcher's Guide to Copyright in Canadian Libraries and Archives* (Ottawa: Canadian Library Association, 2001)

Lesley Ellen Harris, *Canadian Copyright Law*, 3rd ed. (Toronto: McGraw-Hill Ryerson, 2000)

Wanda Noel, *Copyright Guide for Canadian Libraries* (Ottawa: Canadian Library Association and ASTED, 1999)

Wanda Noel and Gerald Breau, *Copyright Matters!: Some Key Questions and Answers for Teachers*, 2nd ed. (Toronto: Council of Ministers of Education, Canada, 2005). Also available at <http://www.cmec.ca/else/copyright/matters/indexe.stm>

GLOSSARY OF TERMS

Academic employees: Used interchangeably with "faculty" to refer to full-time, partial-load, part-time, and sessional professors, instructors, counsellors, and librarians

Accessible Media Coordinator: The librarian within the Library Learning Commons of the Educational Resources Department who is responsible for the implementation of the College's Policy on Captioned Media and E-Text.

Authorization: Used interchangeably with "permission" to refer to the consent of the copyright owner to allow someone to do something with a work (e.g., copy it, perform it, etc.) that only the copyright owner has the right to do

Copyright: a) The statutory protection of the original expression of ideas in the form of text, images, sounds, or a combination thereof b) The rights of the copyright owner to control the use of his/her work by others. Examples of rights include the right to reproduce a work, to perform it in public, to publish it for the first time, to broadcast it, to translate it, to adapt it, etc.

Copyright Librarian: The librarian within the Library Learning Commons of the Educational Resources Department who is responsible for providing advice to college staff on materials related to copyright.

Faculty: Used interchangeably with "academic employees" to refer to full-time, partial-load, part-time, and sessional professors, instructors, counsellors, and librarians

Library Learning Commons (LLC): The Library Learning Commons (LLC) is an administrative department of the College and exists within the College's Educational Resources Department.

Learning Innovations and Academic Development (LIAD): The Learning Innovations and Academic Development Department is an administrative department of the College and exists within the College's Centre for Continuous Learning.

Intellectual property: Includes copyrights, patents, trade-marks, industrial designs, integrated circuit topography, and plant breeders' rights

Moral rights: The rights of an author or creator (who may or may not be the owner of the copyright in the work) to have his or her work properly attributed, and to prevent changes to his or her work, or its use in association with a product or cause, that would damage the reputation of the author.

Permission: Used interchangeably with "authorization" to refer to the consent of the copyright owner to allow someone to do something with a work (e.g., copy it, perform it, etc.) that only the copyright owner has the right to do

Professor: Refers to teaching faculty under the academic collective agreement and will include full-time, partial-load, part-time, and sessional professors, instructors.

Appendix A

George Brown College

STUDENT COURSE WORK RELEASE FORM

Date: _____

Student Name _____ (Print)

Student ID Number _____

I _____ (student name) give permission to George Brown College to use the following work, which I created as a course assignment at George Brown College:

[Identify/describe assignment or student work for which permission is requested. Note: the work referred to can be visual, tactile, involve movement, sound or text and may use any materials or mechanisms, including digital formats.]

As creator of this work, I retain all copyright and moral rights in the work.

My permission is given to use my work, royalty free, for the purposes of: *[List the purposes to which the work will be used. Describe how it will be used and for what duration. Examples include: display, promotion and educational purposes, such as: • exhibits • printing • web publishing • electronic publishing or • any other form of reproduction and distribution. The time limit might be for a specific duration or for the term of copyright.]*

I agree to inform any person to whom I may hereafter assign or license my copyright in my course assignments of the rights granted by me to George Brown College in this non-exclusive license.

Student Signature

Date

Appendix B

Association of Canadian Community Colleges

Fair Dealing Policy

Part I: Background/Introduction

This document is composed of:

Part I: Background/Introduction

Part II: Copying Guidelines

Part III: Interlibrary Loan

Part IV: Library Reserve

Part V: Document Delivery

Part VI: Faculty Member Fair Dealing

Legal counsel for the Association of Canadian Community Colleges (ACCC) has prepared, and recommends for adoption by each ACCC member outside Quebec, whether or not the member intends to operate under the Access Copyright Post-secondary Educational Institution Tariff, 2011 to 2013 (the "Proposed Tariff"), the attached fair dealing policy. The fair dealing policy outlines the copying of published works that can be made in print or electronic format by staff and faculty members under the exception for fair dealing in sections 29 to 29.2 of the *Copyright Act*, without seeking permission of the copyright owner. The policy does not apply to audio or video recordings.

The fair dealing policy does not address exceptions in the *Copyright Act* other than fair dealing. Depending on the circumstances, other exceptions in the Act may also permit the copying of works without the permission of the copyright owner. One example of an exception is section 29.4(1). It provides that it is not an infringement of copyright for an educational institution to make a manual reproduction of a work onto a dry-erase board, flip chart or other similar surface intended for the display of handwritten material. Another example is section 30.2 which provides that it is not an infringement of copyright for a library to do anything on behalf of any patron that the patron could do herself under fair dealing. ACCC member institutions may wish to include the fair dealing policy in copyright guidelines or a copyright compliance policy that addresses other exceptions under the *Copyright Act*.

The fair dealing policy does not restrict any copying that an ACCC member institution is permitted to do under arrangements that the institution has with publishers, e.g., under a licence, or a transactional permission with the publisher or the publisher's representative, e.g., Access Copyright or the Copyright Clearance Centre.

The fair dealing policy does not permit making copies for sale to students in course packs, making copies of required readings for library reserve, or posting copies on course management systems, e.g., Blackboard, or on course websites, except for a copy in electronic form posted on a course management system by a staff member of an ACCC member institution's library or other administrative unit, and not by a faculty member who is a course instructor, for the purpose of electronic library reserve, provided that the posting complies with the safeguards in paragraph 17 of the policy.

Some licence agreements that ACCC member institutions have with publishers that provide access to publications in electronic format restrict the making or dissemination of copies. Where there is a conflict between the terms of a licence agreement and the fair dealing policy, the terms of the licence agreement apply.

The policy contemplates that the ACCC member institution will appoint a person who will make decisions on whether copying outside the scope of the copying guidelines are for one of the fair dealing purposes of research, private study, review, criticism or news reporting, and in all the circumstances, whether the making of the copies is fair. Clause 10 of the policy sets out the factors to be considered in determining whether the making of a copy for one of the fair dealing purposes is fair. If the copying is for one of such purposes and the making of the copy is fair, the copying can be made under the fair dealing exception without the permission of the copyright owner.

PART II - Copying Guidelines

1. Except where otherwise stated, these guidelines apply to an ACCC member institution making a single copy from a work protected by copyright for the purposes of research, private study, review, criticism or news reporting in circumstances in which the consent of the owner of copyright has not been secured and is not required by reason of the fair dealing exception in the Copyright Act. Permission from a copyright holder may be required where the copy falls outside of these guidelines.

2. Single copies that are permitted to be made pursuant to this policy must be made only from publications in which copyright subsists, such as, books, journals and other periodical publications, newspapers and magazines ("Published Works"). A copy may only be made from a lawful copy of the work in the possession of the ACCC member institution, and if the lawful copy is in electronic form, there is no restriction against making a copy under the contractual terms relating to the Published Work.

3. No copying may exceed 10 per cent of a Published Work, other than a textbook produced primarily for the post secondary education market, or the following, whichever is greater:

- (a) an entire chapter from a book provided that it does not exceed 20 per cent of the book;
- (b) an entire article from a periodical publication;
- (c) an entire short story, play, poem or essay from a book or periodical publication;
- (d) an entire entry from an encyclopedia, dictionary, annotated bibliography or similar reference book;
- (e) an entire reproduction of an artistic work from a book or periodical publication; and
- (f) a single musical score from a book or periodical publication.

4. No copying may exceed 5 per cent of a textbook produced primarily for the post secondary education market, or the following, whichever is greater:

- (a) an entire chapter from a textbook provided that it does not exceed 10 per cent of the textbook;
- (b) an entire short story, play, poem or essay from the textbook provided that it does not exceed 10 per cent of the textbook; and

- (c) an entire reproduction of an artistic work or a single musical score from the textbook provided that it does not exceed 10 per cent of the textbook.
5. Notwithstanding any of the other provisions of these guidelines, no copies may be made of the following:
- (a) any of the works referred to in clauses 3(b) to 3(f) of this policy where the publication containing the work does not contain other works. For example, no copy may be made of a play from a publication containing the play but no other work;
 - (b) unpublished works, subject to the provisions of clause 10 below;
 - (c) proprietary workbooks, work cards, assignment sheets, tests and examination papers;
 - (d) instruction manuals;
 - (e) newsletters with restricted circulation intended to be restricted to a fee paying clientele; or
 - (f) business cases which are made available for purchase.
6. Each paper copy made pursuant to Part III (Interlibrary Loan), Part IV (Library Reserve) and Part V (Document Delivery) of this policy shall contain, on at least one page, the name of the author or artist (where known), the title of the publication from which the copy was made, the name of the publisher of that publication and the following statement:
- This copy is made solely for the use by a student, staff member, faculty member or library patron for research, private study, review, criticism or news reporting. Any other use may be an infringement of copyright if done without securing the permission of the copyright owner.
7. Each electronic copy made pursuant to Parts III (Interlibrary Loan), Part IV (Library Reserve) and Part V (Document Delivery) of this policy shall have the information and statement referred to in paragraph 6 on at least one page, except for an electronic copy made available from a server pursuant to this policy, where that information and statement could instead be associated with the copy such that notice of that information and statement would come to the attention of the person who accesses the copy.
8. If a fee is charged for making a copy the fee is set no more than an amount representing a reasonable approximation of the actual cost of making and delivering the copy.
9. Staff shall use reasonable efforts to guard against systematic, cumulative copying from the same work which in total exceeds the portion of the work that may be copied pursuant to these guidelines and to ensure that the number of copies made complies with this policy. If a staff member suspects that a student, other staff member or faculty member

is engaged in systematic, cumulative copying, the matter must be referred to the staff member responsible for administering this policy or his or her delegate for review, and any further requests from that student, staff member or faculty member for a copy may be refused.

10. Requests for the making of copies which fall outside these copying guidelines and requests for making of copies of unpublished works may be referred to the staff member responsible for administering this policy or to his or her delegate for evaluation. A determination will be made as to whether the proposed copies are permissible in all the circumstances relating to the requests and may ultimately be refused. The evaluation will examine all relevant circumstances, including:

- (a) the purpose of the proposed copying, including whether it is for research, private study, review, criticism or news reporting;
- (b) the character of the proposed copying, including whether it involves single or multiple copies, and whether the copy is destroyed after it is used for its specific intended purpose;
- (c) the amount or proportion of the work which is proposed to be copied and the importance of that work;
- (d) alternatives to copying the work, including whether there is a non-copyrighted equivalent available;
- (e) the nature of the work, including whether it is published or unpublished; and
- (f) the effect of the copying on the work, including whether the copy will compete with the commercial market of the original work.

PART III - Interlibrary Loan

11. This policy on interlibrary loan applies to a loan from one ACCC member institution's library in Canada at the request of another ACCC member institution's library in Canada for delivery to that library or for transmission to a student, staff member or faculty member of that other ACCC member institution. This policy does not apply to a loan from an ACCC member institution library to a public or commercial library or to a library located outside of Canada. Depending on the circumstances surrounding the request for the loan, this policy may apply by analogy. Specific consideration of all the circumstances would have to be given to determine whether this policy would apply by analogy.²

Paper Copies

12. A single copy may be made onto paper pursuant to the Copying Guidelines for interlibrary loan, subject to the following safeguards:

(a) the library making the copy has received written confirmation in paper or electronic form from the library requesting the copy or from the patron of that library that the patron requires the copy for research, private study, review, criticism or news reporting, and that the patron is a student, staff member or faculty member of the ACCC member institution requesting the copy;

(b) where the patron requires the copy for review, criticism or news reporting, the library making the copy advises that, in using the copy for any of those purposes, the patron mentions:

(i) the source; and

(ii) if given in the source, the name of the author of the work; and

(c) where the purpose of making the paper copy is to use it to make an electronic copy for use in interlibrary loan, the paper copy is promptly destroyed after the electronic copy is made.

Electronic Copies

13. A single copy may be made in electronic form pursuant to the Copying Guidelines for interlibrary loan and may be transmitted to the library requesting the copy using Ariel or similar technology, subject to the following safeguards:

² This policy has been written to clarify fair dealing for access to library resources. Fair dealing, of course, has wider application and is legitimately and reasonably called upon in other contexts and circumstances. While this particular policy does not specifically address all such circumstances it can, as noted in clause 11 of the policy, apply by analogy in certain situations. It is not unreasonable to expect for example that, subject to a consideration of the facts, fair dealing would apply in the context of an interlibrary loan request from a local public library to an ACCC member institution's library.

(a) the library making the copy has received written confirmation in paper or electronic form from the library requesting the copy that the patron of that library requires the copy for research, private study, review, criticism or news reporting, that the patron requiring the copy is a student, staff member or faculty member of the ACCC member institution requesting the copy, and that once that library received the electronic copy and makes a copy onto paper it will delete the electronic copy;

(b) where the patron requires the copy for review, criticism or news reporting, the library making the copy advises that, in using the copy for any of those purposes, the patron mentions:

(i) the source; and

(ii) if given in the source, the name of the author of the work;

(c) the library making the copy has received written acknowledgement from the library requesting the copy that it will only use the electronic copy transmitted to it for the purpose of making a copy onto paper for the patron of that library that required the copy and will delete the electronic copy once it has furnished the paper copy to its patron; and

(d) the Ariel or similar technology used to transmit the copy is set or configured so that the copy is deleted once the transmission is completed. WN- note to draft: "Ariel" is a technology commonly used by libraries to transmit material to library patrons.

14. A single copy may be made in electronic form pursuant to the Copying Guidelines for interlibrary loan and may be transmitted to a patron of the library requesting the copy in electronic form by desktop delivery, subject to the following safeguards:

(a) the library making the copy has received written confirmation in paper or electronic form from the library requesting the copy that the patron of that library is a student, staff member or faculty member of the ACCC member institution requesting the copy;

(b) where the patron requires the copy for review, criticism or news reporting, the library making the copy advises the patron of the library requesting the copy that, in using the copy for any of those purposes, the patron mentions:

(i) the source; and

(ii) if given in the source, the name of the author of the work;

(c) the library making the copy has, before transmitting the copy, received written confirmation in paper or electronic form from the patron of the library requesting the copy that the patron requires the copy for research, private study, review, criticism or news reporting, that the patron will only use that copy for research, private study,

review, criticism or news reporting, and that the patron will not transmit the copy to any third party;

(d) the electronic copy is made available to the patron requesting the copy either by email sent directly to the patron, or from a secure server protected by a technological protection measure that ensures that the copy is only made available to the patron requesting the copy;

(e) the electronic copy is transmitted to the patron requesting the copy in PDF format or a similar format that restricts the copy from being altered by the patron; and

(f) if transmitting the copy by email, the library deletes its sent email once the email has been transmitted, and if making the copy available from a secure server, the library deletes the copy stored on its server once the patron requesting the copy has downloaded one copy from the server and is not transmitted to another patron requesting a copy.

PART IV - Library Reserve

15. This policy applies to paper copies made by a staff or faculty member for library reserve, and to electronic copies made by a staff member of the ACCC member institution's library or other administrative unit from Published Works for a student of the institution. This policy does not permit the making of copies for library reserve by a faculty member who is a course instructor.

Paper Copies

16. One paper copy for each 30 students in a course of instruction up to a maximum of 3 may be made onto paper pursuant to the Copying Guidelines of this policy for library reserve, subject to the following safeguards:

- (a) the paper copies are made by or at the request of a faculty member in respect of a specific course of instruction offered by the ACCC member institution;
- (b) the paper copies are made as an optional and supplementary source of information for students and must be a small proportion (no more than 25 per cent) of the required reading for a particular course, and the ACCC member institution's library has received, from the faculty member requesting the copies, a written acknowledgement in paper or electronic form confirming that the copies are intended as an optional and supplementary source of information for students and that the copies amount to no more than 25 per cent of the required reading for the course;
- (c) the use of library reserve must not substitute for the purchase of books, course packs or other published materials;
- (d) prior to loaning the paper copy to a student, the library has received from the student a written acknowledgement in paper or electronic form that he or she is a student enrolled in a course of instruction at the ACCC member institution, that the student requires the copy for research, private study, review, criticism or news reporting, and that the student will not use the copy for any other purposes;
- (e) where the student requires the copy for review, criticism or news reporting, the library advises the student that, in using the copy for any of those purposes, the student mentions:
 - (i) the source; and
 - (ii) if given in the source, the name of the author of the work;
- (f) the paper copy is loaned to the student for a period of limited duration;
- (g) the paper copy is destroyed within a reasonable time once the course of instruction or series of courses it pertains to comes to an end; and

(h) where the purpose of making the paper copy is to use it to make an electronic copy for library reserve, the paper copy is promptly destroyed after the electronic copy is made.

Electronic Copies

17. A single copy in electronic form may be made available to a student for library reserve from an ACCC member institution's server pursuant to the Copying Guidelines, subject to the following safeguards:

(a) the electronic copy is made at the request of a faculty member in respect of a specific course of instruction offered by the ACCC member institution;

(b) the electronic copy is made as an optional and supplementary source of information for students and must be a small proportion (no more than 25 per cent) of the required reading for a particular course, and the ACCC member institution's library has received, from the faculty member requesting the copies, written acknowledgement in paper or electronic form confirming that the copies are intended as an optional and supplementary source of information for students and that the copies amount to no more than 25 per cent of the required reading for the course;

(c) the use of library reserve must not substitute for the purchase of books, course packs or other published materials;

(d) prior to providing a student with access to the electronic copy, the library has received from the student a written acknowledgement in paper or electronic form that he or she is a student enrolled in the course of instruction at the ACCC member institution for which the copy was made, that the student requires the copy for research, private study, review, criticism or news reporting, that the student will not use the copy for any other purpose, that the student will not transmit the copy to any third party and that the student will only print out one paper copy from the electronic copy;

(e) the electronic copy is made available to the student from a secure server protected by a technological protection measure that ensures that the copy is only made available to the students enrolled in the course of instruction for which the copy was made;

(f) the electronic copy is made available to the student on a read-only basis in PDF format or a similar format that prevents the copy from being altered by the student; and

(g) the electronic copy made by the ACCC member institution is deleted once the course of instruction or the series of courses it pertains to has come to an end.

Part V - Document Delivery

18. This policy on document delivery applies to copies made by an ACCC member institution's library from Published Works for a patron of the library.

Paper Copies

19. A single copy may be made onto paper pursuant to the Copying Guidelines for document delivery for a patron of the ACCC member institution's library who is a student, staff member or faculty member of the institution, subject to the following safeguards:

(a) the library has received written confirmation in paper or electronic form from the patron that is a student, staff member or faculty member of the ACCC member institution, and that the patron requires the copy for research, private study, review, criticism or news reporting;

(b) where the student requires the copy for review, criticism or news reporting, the library advises the student that, in using the copy for any of those purposes, the student mentions:

(i) the source; and

(ii) if given in the source, the name of the author of the work; and

(c) where the purpose of making the paper copy is to use it to make an electronic copy to provide to the patron, the paper copy is promptly destroyed after the electronic copy is made.

20. A single copy may be made onto paper pursuant to the Copying Guideline for document delivery, for a patron who is not a student, staff member or faculty member of the ACCC member institution, subject to the following safeguards:

(a) the library has permitted the patron to have access to its premises and the patron requests the copy while on the premises of the library;

(b) the library has received written confirmation in paper or electronic form from the patron that the patron requires the copy for research, private study, review, criticism or news reporting; and

(c) where the patron requires the copy for review, criticism or news reporting, the library advises the patron that, in using the copy for any of those purposes, the patron mentions:

(i) the source; and

(ii) if given in the source, the name of the author of the work.

Electronic Copies

21. A single copy may be made in electronic form pursuant to the Copying Guidelines for document delivery for a patron of the ACCC member institution's library, subject to the following safeguards:

(a) the library has received written confirmation in paper or electronic form from the patron that the patron is a student, staff member or faculty member of the ACCC member institution, that the patron requires the copy for research, private study, review, criticism or news reporting, that the patron will only use that copy for research, private study, review, criticism or news reporting, and that the patron will not transmit the copy to any third party;

(b) where the patron requires the copy for review, criticism or news reporting, the library advises the patron that, in using the copy for any of those purposes, the patron mentions:

(i) the source; and

(ii) if given in the source, the name of the author of the work;

(c) the electronic copy is made available to the patron requesting the copy either by email sent directly to the patron, or from a secure server protected by a technological protection measure that ensures that the copy is only made available to the patron requesting the copy;

(d) the electronic copy is transmitted to the patron requesting the copy in PDF format or a similar format that restricts the copy from being altered by the patron; and

(e) if transmitting the copy by email, the library deletes its sent email once the email has been transmitted, and if making the copy available from a secure server, the library deletes the copy stored on its server once the patron requesting the copy has downloaded one copy from the server.

Part VI - Faculty Member Fair Dealing

22. This policy on faculty fair dealing applies to paper and electronic copies made from Published Works by a faculty member, or by a staff member of the ACCC member institution for a faculty member.

Paper Copies

23. A single copy may be made by a faculty member pursuant to the Copying Guidelines, subject to the following safeguards:

- (a) the faculty member requires the copy for the faculty member's personal research, private study, review, criticism or news reporting; and
- (b) where the faculty member uses the paper copy for review, criticism or news reporting, the faculty member mentions:
 - (i) the source; and
 - (ii) if given in the source, the name of the author of the work.

24. A single paper copy may be made by a staff member of the ACCC member institution for a faculty member pursuant to the Copying Guidelines, subject to the following safeguards:

- (a) the faculty member advises the staff member that the faculty member requires the copy for the faculty member's personal research, private study, review, criticism or news reporting;
- (b) the faculty member uses the copy for the faculty member's personal research, private study, review, criticism or news reporting; and
- (c) where the faculty member uses the paper copy for review, criticism or news reporting, the faculty member mentions:
 - (i) the source; and
 - (ii) if given in the source, the name of the author of the work.

Electronic Copies

25. A single copy in electronic form may be made by a faculty member pursuant to the Copying Guidelines, subject to the following safeguards:

- (a) the faculty member requires the copy for the faculty member's personal research, private study, review, criticism or news reporting;
- (b) where the faculty member uses the electronic copy for review, criticism or news reporting, the faculty member mentions:

- (i) the source; and
- (ii) if given in the source, the name of the author of the work; and
- (c) the faculty member does not transmit the electronic copy to a third party, except where the transmission is pursuant to the purpose of review, criticism or news reporting.

26. A single copy in electronic form may be made by a staff member of the ACCC member institution for a faculty member pursuant to the Copying Guidelines, subject to the following safeguards:

- (a) the faculty member advises the staff member that the faculty member requires the copy for the faculty member's personal research, private study, review, criticism or news reporting;
- (b) the faculty member uses the copy for the faculty member's personal research, private study, review, criticism or news reporting;
- (c) where the faculty member uses the electronic copy for review, criticism or news reporting, the faculty member mentions:
 - (i) the source; and
 - (ii) if given in the source, the name of the author of the work.