AHS Fair Dealing Guidelines

Introduction

Alberta Health Services ("AHS") is committed to complying with the Copyright Act (Canada) (known as the "Act") in the use of copyrighted material created by others (known as "third parties"), and the production of material by AHS Staff that is subject to protections under the Act.

The fair dealing provisions in the Act permit use of a copyright-protected work without permission from the copyright owner or the payment of copyright royalties in certain circumstances. This is known as "fair dealing". To qualify for fair dealing, two tests must be passed.

First, the "dealing" must be for a purpose stated in the Act: research, private study, criticism, review, news reporting, education, satire or parody. Use of a copyright-protected work for any one of these purposes passes the first test.

Second, the dealing must be "fair." In three (3) landmark cases: CCH Canadian Ltd. v. Law Society of Upper Canada ("CCH") in 2004, Alberta (Education) v. Canadian Copyright Licensing Agency (Access Copyright) ("Access Copyright") in 2012, and SOCAN v. Bell Canada et al. ("SOCAN") in 2010, the Supreme Court of Canada ("SCC") provided guidance, including a six (6) factor analysis for determining whether a particular use or dealing is fair. In CCH, the SCC said, "To conclude, the purpose of the dealing, the character of the dealing, the amount of the dealing, the nature of the work, available alternatives to the dealing and the effect of the dealing on the work are all factors that could help determine whether or not a dealing is fair. These factors may be more or less relevant to assessing the fairness of a dealing depending on the factual context of the allegedly infringing dealing. In some contexts, there may be factors other than those listed here that may help a court decide whether the dealing was fair." (from CCH, 2004 SCC 13, at para 60).

To assist AHS Staff understand how to apply the six factor analysis set out by the SCC, please consider the following:

1. **Purpose of the dealing** - must be for research, education, private study, criticism, parody, satire, review or news reporting.

2. **Character of the dealing** – limit the use to a specific legitimate purpose. For example, making a single copy is generally regarded as being more fair than making multiple copies, depending on the context.

3. **Amount of the dealing** - use the least amount relative to the entire work. If the amount taken from a work is "trivial", the courts have determined that no copyright infringement occurred, and therefore, there is no need for the fair dealing defense. However, it is important to note that the Act does not state any specific amount of a work that can be copied without infringing copyright. In other words, there is no specific calculation or rule to determine what amount would be fair and what wouldn't be fair – it is a subjective test. It is also important to note that the "amount of the dealing" should be assessed based on the individual need, not the amount of dealing in the aggregate.
4. **Nature of the work** – The courts have also stated that it is necessary to consider the nature of the work in question to determine if a dealing is fair.

5. **Available alternatives** – when there are no commercial alternative to the copyrighted work, the dealing is more likely to be considered fair than if there are other alternatives available.

6. **Effect of the dealing on the work** – consider the impact of use on the copyright owner. Impact that does not harm the copyright owner either economically or his or her reputation is likely to be considered more fair.

AHS Fair Dealing Guidelines (the “Guidelines”)

AHS has adopted these Guidelines to assist AHS Staff to apply fair dealing and to provide reasonable safeguards for owners of copyrighted material in accordance with the Act and Supreme Court of Canada decisions. These Guidelines have been adapted from other guidelines commonly used by other organizations. The objective of these Guidelines is to provide high level guidance to AHS Staff. These Guidelines are not intended to provide or replace legal advice. In most instances, reproduction and distribution of copyrighted works will require the permission of the copyright owner. For additional assistance or guidance, please contact the Knowledge Resource Service.

1. Staff in AHS may communicate and reproduce, in paper or electronic form, short excerpts from a copyright-protected work for the purposes of research, private study, criticism, review, news reporting, education, satire or parody.

2. Copying or communicating short excerpts from a copyright-protected work under this Fair Dealing Guidelines for the purpose of research, private study, criticism, review, news reporting, education, satire or parody must mention the source and, if given in the source, the name of the author or creator of the work.

3. Generally speaking, a short excerpt means:

   a) up to 10% of a copyright-protected work (including a literary work, musical score, sound recording, and an audiovisual work);

   b) one chapter from a book;

   c) a single article from a periodical;

   d) an entire artistic work (including a painting, print, photograph, diagram, drawing, map, chart, and plan) from a copyright-protected work containing other artistic works

   e) an entire newspaper article or page;

   f) an entire single poem or musical score from a copyright-protected work containing other poems or musical scores;

   g) an entire entry from an encyclopedia, annotated bibliography, dictionary or similar reference work;

The content of this material is provided to AHS Staff for information purposes only on an “as is” basis without warranty, representation or condition of any kind. AHS Staff who require legal advice regarding any copyright matter should contact the Corporate and Commercial Department within AHS Legal & Privacy for further assistance. These AHS Fair Dealing Guidelines have been adapted with permission from University of Calgary (“U of C”) Library as made available on their “Copyright” website as well as with permission from Canadian Universities, formerly known as the Association of Universities and Colleges of Canada (“AUCC”). AHS, the U of C and AUCC accept no liability for any incorrect or obsolete information contained in this material.
4. Copying or communicating multiple short excerpts from the same copyright-protected work, with the intention of copying or communicating substantially the entire work, is prohibited.

5. Copying or communicating that exceeds the limits in the Fair Dealing Guidelines may be referred to the Knowledge Resources Service for evaluation. An evaluation of whether the proposed copying or communication is permitted under fair dealing will be made based on all relevant circumstances.

6. Other sources of permission (including permission from a copyright holder) will be required where the copying falls outside of the above Guidelines. For assistance in obtaining permission for this copying, see Copyright Basic Education Guide and/or contact the Knowledge Resource Service.

All AHS staff are responsible for reviewing these AHS Fair Dealing Guidelines before copying any third party materials. Any AHS staff member who is unclear about whether copying third party materials constitutes “fair dealing” should contact the Knowledge Resource Service for further guidance.