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EFFECTIVE:	December 18, 2012
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RELATED POLICIES:	See References
REPEALS:	
REVIEW DATE:	2017-2018

1.0 OBJECTIVE:

- 1.1 It is the policy of the Windsor-Essex Catholic District School Board to comply with the *Fair Dealing Guidelines* as developed by the Council of Ministers of Education Canada (CMEC) Copyright Consortium. The Windsor-Essex Catholic District School Board will communicate the *Fair Dealing Guidelines* to all school locations on an annual basis in order to ensure that all staff understand the obligations of the school board in accordance with the *Copyright Modernization Act*.

2.0 DEFINITIONS:

- 2.1 “Copyrights” - A set of exclusive rights, including the right to copy a work, a performance or sound recording.
- 2.2 “Copyright Infringement” - Violation of copyright through unauthorized copying or use of work or other subject matter under copyright.
- 2.3 “Fair Dealing” – Fair dealing is a user’s right, outlined in the *Copyright Act* that identifies allowable purposes (or dealings) for the use of copyright-protected materials without permission or payment of copyright royalties.
- 2.4 “Fair Dealing Guidelines” (Appendix A) - The fair dealing provision in the *Copyright Act* permits use of a copyright-protected work without permission from the copyright owner or the payment of copyright royalties. To qualify for fair dealing, two tests must be passed.

First, the “dealing” must be for a purpose stated in the *Copyright Act*: research, private study, criticism, review, news reporting, education, satire, and parody. Educational use passes the first test.

The second test is that the dealing must be “fair”. In landmark decisions in 2004 and in 2012, the Supreme Court of Canada provided guidance as to what this test means in schools and post-secondary institutions.

The “Fair Dealing Guidelines” apply to fair dealing in non-profit K-12 schools and post-secondary educational institutions and provide reasonable safeguards for the owners of copyright-protected works in accordance with the *Copyright Act* and the Supreme Court decisions.

- 2.5 “Moral Rights” - Rights that authors and performers retain over the integrity of a work or sound recording, and the right to be named as its creator even after the sale or transfer of copyright.

3.0 GUIDING PRINCIPLES:

- 3.1 The Windsor-Essex Catholic District School Board respects the rights of copyright owners and shall not knowingly copy, sell, distribute, or use any print or electronic materials, without the express permission by the copyright owner, or in accordance with appropriate policies and/or licence agreements.
- 3.2 Teachers, instructors, professors and staff members in non-profit educational institutions may communicate and reproduce, in paper or electronic form, short excerpts from a copyright-protected work for the purpose of research, private study, criticism, review, news reporting, education and parody, in accordance with the “Fair Dealing Guidelines” (Appendix “A”) and the provisions of the *Canada Copyright Act*.
- 3.3 All use of copyright-protected work shall be in compliance with the Canada Copyright Act and its Regulations, the *Copyright Modernization Act*, the “Fair Dealing Guidelines” (Appendix A), relevant policies of the Windsor-Essex Catholic District School Board, and all institutional licensing agreements.

4.0 SPECIFIC DIRECTIVES:

- 4.1 Teachers and students may use publicly-available Internet materials for their learning and educational pursuits. Such materials may be used for routine classroom activities such as downloading, saving, and sharing. Any such materials must be credited (e.g., in bibliographies) in the same way using print-sourced materials would be.
- 4.2 Copying or communicating short excerpts from a copyright-protected work under the Fair Dealing Guidelines (Appendix A) for the purpose of **news reporting, criticism or review** should mention the source and, if given in the source, the name of the author or creator of the work.
- 4.3 A single copy of a short excerpt from a copyright-protected work may be provided or communicated to each student enrolled in a class or course:
- a) as a class handout
 - b) as a posting to a learning or course management system that is password protected or otherwise restricted to students of a school or post-secondary institution
 - c) as part of a course pack
- 4.4 A “short excerpt” means:
- a) up to 10% of a copyright-protected work (including a literary work, musical score, sound recording, and an audio-visual 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 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
- 4.5 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.
- 4.6 Staff and students must be mindful that some copying or communicating may not fall within the parameters set out in the Fair Dealing Guidelines (Appendix A). When such copying occurs permission can be sought from the copyright holder for free use or a royalty must be paid to the copyright holder.
- 4.7 Copying or communicating that exceeds the limits in the Fair Dealing Guidelines (Appendix A) may be referred to the school principal, department supervisor or other person designated by the board for evaluation. An evaluation of whether the proposed copying or communication is permitted under fair dealing will be made based on all relevant circumstances.
- 4.8 Any fee charged by the educational institution for communicating or copying a short excerpt from a copyright-protected work must be intended to cover only the costs of the institution, including overhead costs.
- 4.9 A copy of the “Fair Dealing Guidelines” (Appendix A) shall be posted within the immediate vicinity of every photocopier in a manner that is readily visible and legible to persons using the photocopier to help them deal fairly with copyright-protected material.

5.0 RESPONSIBILITY:

- 5.1 This policy applies to all employees and students of the Windsor-Essex Catholic District School Board.
- 5.2 The Associate Director of Education is responsible for annually communicating this policy and the “Fair Dealing Guidelines” (Appendix “A”) informing all staff and students of copying parameters that qualify for fair dealing in an educational setting.
- 5.3 The school principal or the immediate supervisor is responsible for implementing local procedures in compliance of this policy at their respective school and administrative sites.

6.0 REVIEW AND EVALUATION:

- 6.1 The effectiveness of this policy shall be assessed through trustee, staff and community satisfaction measures.
- 6.2 This policy will be reviewed in the 2017 – 2018 policy review cycle.

7.0 REFERENCES:

Legal Framework:

Canada Copyright Act, R.S.C., 1985 and its Regulations

Copyright Modernization Act, 2012

Exceptions for Educational Institutions, Libraries, Archives and Museum Rights, SOR/99/325

Educational Program, Work and Other Subject-matter Record-Keeping Regulations, SOR/2001-296

Fair Dealing Guidelines – Council Ministers of Education Canada (CMEC) Copyright Consortium

Education Act (Appendix “A”)

Related policies of the Board which support this policy are:

A:09 Educational Resources Deselection

A:12 Code of Ethics

A:14 Promoting and Supporting Equity & Inclusion Within a Catholic Community

A:16 Information/Materials Distribution to Parents

A:17 Educational Research and related Surveys

A:18 Continuing Education/Summer School Programs Policy

A:30 Privacy

A:31 Accessibility Standards for Customer Service

F:05 Fees for Learning Materials and Activities

H:02 Employee Wellness

H:17 Employees' Acceptable Use of Electronic Access, Information Technology and Data

H:18 Internet Acceptable Use - Employees

SC:01 Catholic School Councils

SC:03 Acceptable Use of the Internet (Students) - Internet Acceptable Use Policy

SC:12 Co-Instructional Activities

SC:15 Code of Conduct

SC:19 Environmental Education

ST:22 Home Instruction - Policy

ST:23 Assessment, Evaluation and Reporting, Grades 1 to 12

ST:24 Special Education Equipment

T:03 Information to Trustees

Fair Dealing Guidelines

The fair dealing provision in the *Copyright Act* permits use of a copyright-protected work without permission from the copyright owner or the payment of copyright royalties. To qualify for fair dealing, two tests must be passed.

First, the "dealing" must be for a purpose stated in the *Copyright Act*: research, private study, criticism, review, news reporting, education, satire, and parody. Educational use of a copyright-protected work passes the first test.

The second test is that the dealing must be "fair." In landmark decisions in 2004 and in 2012, the Supreme Court of Canada provided guidance as to what this test means in schools and post-secondary educational institutions.

These guidelines apply fair dealing in non-profit K-12 schools and post-secondary educational institutions and provide reasonable safeguards for the owners of copyright-protected works in accordance with the *Copyright Act* and the Supreme Court decisions.

Guidelines

1. Teachers, instructors, professors and staff members in non-profit educational institutions 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 and parody.
2. Copying or communicating short excerpts from a copyright-protected work under these Fair Dealing Guidelines for the purpose of news reporting, criticism or review should mention the source and, if given in the source, the name of the author or creator of the work.
3. A single copy of a short excerpt from a copyright-protected work may be provided or communicated to each student enrolled in a class or course:
 - a. as a class handout
 - b. as a posting to a learning or course management system that is password protected or otherwise restricted to students of a school or post-secondary educational institution
 - c. as part of a course pack
4. A short excerpt means:
 - a. up to 10% of a copyright-protected work (including a literary work, musical score, sound recording, and an audiovisual work)
 - b. one chapter from a book
 - c. a single article from a periodical

- d. an entire artistic work (including a painting, print, photograph, diagram, drawing, map, chart, and plan) from a copyright-protected work containing other artistic works
 - e. an entire newspaper article or page
 - f. an entire single poem or musical score from a copyright-protected work containing other poems or musical scores
 - g. an entire entry from an encyclopedia, annotated bibliography, dictionary or similar reference work
5. 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.
 6. Copying or communicating that exceeds the limits in this Fair Dealing Guidelines may be referred to a supervisor or other person designated by the educational institution for evaluation. An evaluation of whether the proposed copying or communication is permitted under fair dealing will be made based on all relevant circumstances.
 7. Any fee charged by the educational institution for communicating or copying a short excerpt from a copyright-protected work must be intended to cover only the costs of the institution, including overhead costs.