



POLICY: Copyright/Fair Dealing		POLICY NUMBER: GA-4
		PREVIOUS/REPLACES: Copyright/Fair Dealing Software Licensing/Copyright
APPROVED BY: Executive Council	EFFECTIVE DATE AS OF: September 28, 2018	PRIOR VERSIONS: August 30, 2017 June 9, 2009

1. Policy Statement:

The purpose of this policy is to set out the rules for the use of copyright protected material at the Manitoba Institute of Trades and Technology (to be referred to as MITT). In its simplest terms, copyright means the right to copy. In general, copyright means the sole right to produce or reproduce a work or a substantial part of it in any form. It includes the right to perform the work or any substantial part of it or, in the case of a lecture, to deliver it. All works, whether published in a physical format, digital or publicly available on the Internet, may be subject to copyright. Rights holders have control over copying and distribution of their works.

Copyright infringement is taken very seriously by MITT. All staff and students must abide by copyright law and this policy. No staff or student will copy any works where a copyright exists without a license or other permission of the Copyright owner or representative of the Copyright owner unless permitted by law.

In general, the term of a copyright lasts for the life of the creator plus 50 years from the end of the year in which the creator died. Once the term of a copyright has expired then the works become the property of the public domain.

The *Copyright Act* outlines in detail the legal obligations if you wish to reproduce a copyrighted work and when permission is required. There are exceptions set out in the *Copyright Act* that permit educational institutions to make copies of works without the permission of the copyright owner in specific circumstances. These exceptions are found under the Fair Dealing provision. There are also additional specific provisions for Educational Institutions found in the Act.

Principles:

- MITT adheres to the *Copyright Act*.
- MITT respects the rights of copyright owners. Proper attribution or citation must be provided when copying or communicating someone else’s work. When third party works are used the source must be acknowledged and if given, the name of the author or creator of the work must be acknowledged.
- MITT has adopted the Fair Dealing Policy as recommended by the Colleges and Institutes Canada (see below).



- MITT facilities and equipment will not be used in activities such as copying, displaying, transmitting copyright material, or breaking digital locks which would contravene legislation, license agreements or guidelines.
- It is the responsibility of the individual using copyrighted material to ensure that appropriate permission has been obtained, that royalties are paid prior to use, or that it falls within the fair dealing provision or other educational exceptions.

2. Scope:

This policy applies to all MITT employees and students.

3. Procedures:

3.1 Ownership of Material:

MITT owns the copyright on all work that is produced by employees and contractors in the course of their employment relationship with MITT. Employees or contractors wishing to use works produced by MITT or material that they have produced themselves in the employment with MITT must receive permission from the President and CEO or designate with the exception of those works that fall within the parameters of Fair Dealing.

Students always hold copyright to their work when they write something, create works of art or produce other copyrightable material as part of their program and studies. The exception to this is if the data, materials, reports, presentations, works of art and other copyrightable material are produced in collaborative research projects conducted with internal or external clients, in accordance with the Intellectual Property Policy.

3.2 Digital Locks:

All MITT employees and students are prohibited from circumventing a digital lock to access copyright-protected works. It is necessary to obtain the permission of the copyright holder.

3.3 Responsible Authority at MITT

The Centre for Learning and Innovation (CLI) is the responsible authority at MITT to provide copyright information for MITT. Where an instructor or employee requires permission to use copyrighted material, this shall be done in conjunction with CLI. All records provided by the copyright holder granting permission will be retained by CLI.



If a user is unsure whether they may be contravening a copyright provision, they should first contact their immediate manager for advice. If the manager is unsure, then the Dean, Director, Principal or equivalent should be contacted in consultation with the CLI. A joint decision will be made and communicated to the end user.

3.4 Copyright Infringement:

Employees and students are not permitted to copy or use more than a short excerpt of a copyright protected work, either physically or digitally without the permission of the copyright holder, unless copying or using the work falls within one of the exemptions in the *Copyright Act*.

MITT does not condone any form of copyright infringement by employees or students. Copyright infringement can result in serious consequences including civil and/or criminal proceedings.

MITT is not liable for any infringement of copyrights made by students. Students who willfully circumvent copyright-protected works may be subject to disciplinary action according to MITT's Student Discipline Policy.

MITT reserves the right to take disciplinary action against employees who willfully circumvent copyright-protected works which may result in disciplinary action up to and including dismissals. Any form of disciplinary action will be subject to MITT's Progressive Discipline Policy.

3.5 Fair Dealing Exception of the *Copyright Act*:

The Fair Dealing provision of the *Copyright Act* permits the use of a copyright-protected work without permission from the copyright owner or the payment of royalties within certain limits. Fair Dealing is not defined in the Act, but decisions issued by the Supreme Court provide guidance as to what fair dealing means in educational institutions.

The Fair Dealing policy presented below is adopted from the Colleges and Institutes Canada.

To qualify for fair dealing, two tests must be passed:

1. First, the "dealing" must be for a purpose stated in the *Copyright Act*: research, private study, criticism, review, news reporting, **education**, satire and parody.
2. Secondly, the dealing must be "fair". In 2012, the Supreme Court of Canada issued a decision interpreting what this test means for non-profit educational institutions. It is "fair" for an instructor to copy "short excerpts" from a copyright protected work for students in a class without permission from the owner or the requirement to pay royalties.



The following points should be adhered to when using copyright-protected work under the fair dealing provision:

1. MITT instructors and staff members 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 this Fair Dealing Policy for the purpose of news reporting, criticism or review must 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 education 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 referenced work
5. Copying or communicating multiple short excerpts from the same copyright-protected work, with the intention of copying or communication substantially the entire work is **prohibited**.
6. Copying or communication that exceeds the limits in these guidelines for Fair Dealing will be referred to the user's immediate manager for advice. If the manager is unsure then the Dean, Director, Principal or equivalent should be contacted in consultation with the CLI 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 MITT for communicating or copying a short excerpt from a copyright-protected work must be intended to cover only the costs incurred by MITT, including overhead costs.



3.6 Educational Exceptions

There are several additional educational exceptions specified in the *Copyright Act* as indicated below:

- The use of copyright-protected materials available through the internet for educational or training purposes.
- Providing lessons that use copyright-protected materials that are legally permissible to MITT to students online, including students that participate in distance education.
- Making one copy of a news program or a news commentary program for the purposes of performing the copy for students for educational or training purposes.
- Using works such as sound recording or videos for the purposes of education and training.
- Using copyright-protected material for display in a classroom.
- Using copyright-protected material in specified ways for a test or exam.

The exceptions are limited by restrictions detailed in the legislation. Appendix “A” provides additional information on these sections to provide guidance and to help users determine what is permitted under copyright law. If the user is unclear, they should contact the CLI for further direction.

3.7 Other Exceptions

1. Exceptions for Persons with Perceptual Disabilities

Section 32 of the *Copyright Act* permits for making a copy of an entire work (except a cinematographic work) into an alternative format (e.g., audio books, Braille, and e-text) including translation, adaptation and performance in public for students with perceptual disabilities as long as the adaptation is not already commercially available in that particular format.

2. Non-Commercial User-Generated Content Exception

Under Section 29.21 of the *Copyright Act*, (also known as the Mash-Up exception or Youtube law) anyone, not just students and instructors are allowed to use copyrighted works to create new works such as music, photos, text material, etc. Conditions for this exception are as follows:

- a) The new work can only be used for non-commercial purposes.
- b) The original work should be sourced including the name of the author, performer, marker or broadcaster if reasonable in the circumstances to do.
- c) The original work must have been acquired legally.
- d) The new work cannot be seen to have a “substantial adverse effect” on the market for the original work.



3. Backup Copies

Under Section 29.24 of the *Copyright Act*, an individual can make a backup copy of a work to protect against it from being lost, damaged or not being usable. The source work must have been obtained legally, and the individual may not circumvent a digital lock to make the backup. The backup copy may not be given away. The backup copy must be immediately destroyed if the individual ceases to own or have a license for the source copy.

4. Copying for Private Purposes

Under Section 29.22 of the *Copyright Act*, an individual can make a copy of work for private purposes provided the source copy was legally obtained, they do not circumvent a digital lock to make the copy, and the copy is not given away.

4. Administration:

The Vice-President Academic is responsible for ensuring this policy is adhered to.

5. Review:

This policy will be reviewed every five years by Executive Council.

6. Reference:

Copyright Act

Academic Integrity Policy – MITT Staff, Instructors, and Students

Integrity in Research Policy

Intellectual Property Policy

MITT Computer and Telecommunications Usage Policy

Progressive Discipline Policy

Student Behaviour Policy

Student Discipline Policy

7. Definitions:

Copyright means the right to produce, reproduce, and copy works. Only the copyright owner (or their agent) has the right to decide when and how the work is to be copied. Copyright protection is automatic once the work is created and applies whether or not a copyright statement appears on the material.



Digital Lock means a prevention measure (programming code) used on digital resources that prevents the copying or transfer of material from one digital technology to another.

Educational Exception is a provision within the *Copyright Act* allowing for use of copyrighted works in an educational setting.

Fair Dealing refers to a user's right under the Canadian *Copyright Act* which permits the use of copyright material without permission or payment of royalties provided the "dealing" or use, is for the purpose of research, private study, criticism, review, news reporting, education, satire and parody.

Intellectual Property means any form of expression or knowledge created by one's intellect including inventions, literary and artistic works, musical works, computer software, patents, designs, symbols, names, and trademarks.

Public Domain means those works that are publicly available or whose intellectual property rights have expired.

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 referenced work



Appendix “A”

Educational Exceptions⁽¹⁾

Educational exceptions in the *Copyright Act* allow specific uses of copyrighted works for instructional purposes without payment or permission from the copyright owner, provided accompanying conditions are met. Listed below is a summary of exceptions and what staff and students are permitted.

a. Copying Material for Instruction (classroom display)

MITT staff and students are permitted to reproduce copyright-protected works for display in class for teaching and training purposes, provided the works are not commercially available in an appropriate format. This exemption goes beyond Fair Dealing as it permits the display of more than a short excerpt of a work.

Reference: *Copyright Act*, Section 29.4(1)

b. Copying Material for Tests and Exams

MITT staff and students are permitted to reproduce, translate, perform, or communicate electronically copyright-protected works for tests or exams, provided the works are not commercially available in an appropriate format.

Reference: *Copyright Act*, Section 29.4(2)

c. Performing a Copyright-Protected Work

MITT staff and students are permitted to give live performances of copyright-protected works, such as plays, provided:

- The performance takes place on campus.
- The performance is for educational or training purposes.
- The performance is not for profit.
- The audience consists primarily of MITT students, faculty and staff.

Reference: *Copyright Act*, Section 29.5(a)



d. Playing Sound Recordings

MITT staff and students can play sound recordings on campus without permission, provided:

- The performance is for educational or training purposes.
- The performance is not for profit.
- The audience consists primarily of MITT staff and students.
- The copy is legally acquired.

Reference: *Copyright Act*, Section 29.5(b)

e. Showing DVDs and Videos

MITT staff and students can show DVDs and videos on campus without permission or Public Performance Rights, provided:

- The performance is for educational or training purposes.
- The performance is not for profit.
- The audience consists primarily of MITT staff and students.
- The copy is legally acquired.

Reference: *Copyright Act*, Section 29.5(d)

f. Copying a News Program for Classroom Use

MITT staff and students are permitted to make a single copy of a news program (excluding documentaries) for display, provided:

- The audience consists primarily of MITT staff and students.
- The copy was made at the time the program was aired by the broadcaster or communicated over the internet.

Documentaries are not permitted under this section. However, under Fair Dealing, up to 10% of a documentary could be reproduced and shown for educational purposes.

Reference: *Copyright Act*, Section 29.6(1)



g. Copying Broadcasts for Classroom Use

MITT staff and students are permitted to make a single copy of a work for display, provided:

- The copy was made at the time the program was aired by the broadcaster or communicated over the internet.
- The audience consists primarily of MITT staff and students.
- The copy is destroyed or paid for within 30 days of creation.

Reference: *Copyright Act*, Section 29.7

h. Reproduction for Lessons by Telecommunication

MITT staff may communicate a lesson (including tests or exams) to students enrolled in that specific course, by telecommunication for educational or training purposes. This section allows digital communication of course material online to students whether they have enrolled in an on-line course or an in-person class. Lessons may be recorded and streamed live or posted and made available to student at a later time provided that:

- MITT and the student destroy the recording or copy within 30 days after receipt of their final course evaluations.
- MITT takes reasonable measures to limit the audience to students only, and to prevent the students from fixing, reproducing or communication the lesson except as permitted under this exception.
- The recordings cannot be sold or distributed beyond the audience of students enrolled in the class.

Reference: *Copyright Act* Section 30.01

i. Public Material Available on the Internet

MITT staff and students are permitted to reproduce, share, or stream works available through the internet, provided:

- The use is for educational or training purposes.
- Access to the work is limited to an audience that consists primarily of MITT students or persons acting under the authority of MITT.
- The work is not protected by a digital lock or technological protection measure.
- There is no clearly visible notice prohibiting use for educational purposes.
- The source and, if provided the author, performer, maker or broadcaster must be cited.
- There is no suspicion that the work has been posted on the internet without the consent of the copyright owner.

Reference: *Copyright Act* Section 30.04

⁽¹⁾ Formatting of Information for Appendix "A" obtained in part from Langara College.