

Subject: Copyright
Effective: April 2017
Revised:

1.0 PURPOSE

The Purpose of the Copyright Policy is to clarify New Brunswick Public Library Service's (NBPLS)'s position as it relates to copyright legislation and our Access Copyright licence.

2.0 APPLICATION

This policy applies to all library patrons and staff who wish to reproduce material in the library's collection that may be subject to copyright.

It outlines how much of copyrighted material can be reproduced under the:

1. Fair Dealing Exceptions of the [Copyright Act](#); and
2. Extended reproduction rights under the Access Copyright licence.

Separate licensing agreements govern NBPLS' subscriptions for electronic products, such as OverDrive and Pretnumerique (which use digital rights management to control their use), and the various online research databases to which NBPLS subscribes. These electronic products are not covered by the Access Copyright licence. For copyright questions relating to electronic products, library staff are to consult the Provincial Office - Public Services Development Unit.

3.0 DEFINITIONS

Copying means the reproduction of a single document in either paper or electronic format.

4.0 LEGAL AUTHORITY

[New Brunswick Public Libraries Act](#)

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5.0 GOALS / PRINCIPLES

NBPLS respects both user rights relating to copyrighted materials and the moral rights of creators and the distribution rights of creators and content providers. It is not the role of Library staff to interpret the [Copyright Act](#) for patrons.

6.0 REQUIREMENTS / STANDARDS

6.1 Fair Dealing

- 6.1.1 Library staff and patrons may make single copies for specific purposes under the fair dealing provision section 29 of the [Copyright Act](#). The specific purposes are **research, private study, education, parody or satire, criticism, review or news reporting**. Library staff making a single copy for a patron must be satisfied that the copy is requested for these purposes. Any doubt concerning the legitimacy of copying for these purposes will be referred to the Library Employee in Charge.
- 6.1.2 Discretion must be used as to the amount of copying. Ordinarily, copies of one article, a portion of a book, one map or one image can be made as a matter of routine. Substantial copying, for example more than 10% of a book or more than one article from the same journal, may not be considered fair dealing according to the factors set out in [CCH Canadian Ltd. v Law Society of Upper Canada, 2004 SCC 13](#).
- 6.1.3 Copying in libraries is provided on a not-for-profit basis. Any fees charged for this service are intended to cover the costs of the library.
- 6.1.4 Copying for any other purpose than stated in section 6.1.1 of this Policy may require the authorization of the copyright owner of the work being copied. In cases where authorization from the copyright owner is required, (for example, when a copy is required for publication in a book or on a website, or for broadcast purposes), the patron or library staff must obtain authorization from the copyright holder before a copy can be made. Responsibility regarding copyright arising in connection with the use of the copy is the responsibility of the patron or staff making the copy.
- 6.1.5 Term of copyright, as per sections 6, 7, 9 and 12 of the [Copyright Act](#), of material in the public domain, in paper or electronic form, has a set time limit:
- 50 years following the end of the calendar year in which the author dies;

- if the identity of the author is unknown, the copyright of the work will be 50 years following the end of the calendar year of its first publication or 75 years following the end of the calendar year of its making;
- for posthumous works, 50 years following the end of the calendar year of the publication, public performance or communication to the public by telecommunication;
- for joint authorship, 50 years following the end of the calendar year in which the last living author dies;
- for any publication under the direction of Her Majesty or any government department, 50 years following the end of the calendar year of first publication.

6.2 Special Exemptions for Library Staff

6.2.1 In accordance with section 30.1 of the [Copyright Act](#), library staff may perform any one of the six following maintenance or management activities in the library's permanent collection whether published or unpublished:

1. copying rare or unpublished originals,
2. copying fragile originals,
3. copying into an alternative format (e.g. transferring VHS to DVD),
4. copying for record keeping and cataloguing,
5. copying for insurance and police investigations, and
6. copying for restoration.

Note: Making a copy for activities 1, 2, and 3 is not permitted if the work is "commercially available."

6.2.2 In accordance with section 30.2(2) of the [Copyright Act](#), paper copies can be made by staff for a patron:

1. of an article from a scientific, technical or scholarly journal provided the copy is used only for research and private study. This exception is limited to "reprographic reproduction", i.e. photocopying. The copy can be made for the library's own patron or for the patron of another library.
2. of an article in a newspaper or other periodical if the issue is at least 12 months old at the time of copying, and the copy is made for research and private study. This exception is limited to "reprographic

reproduction”, i.e. photocopying. The copy can be made by staff for the library’s own patron or for the patron of another library.

6.2.3 **Reproduction in Alternate Format**

In accordance with section 32(1)(a) of the [Copyright Act](#), library staff may copy for a patron with a perceptual disability library materials, where materials are literary, musical, artistic or dramatic works other than a cinematographic work, and where the copy or sound recording of these are in a format specially designed for persons with a perceptual disability. This does not apply if the work is “commercially available” in a format designed to meet the needs of a patron with a perceptual disability.

6.3 **Extended Copying under a Licence with Access Copyright**

6.3.1 NBPLS provides an Access Copyright licence for all libraries (See Access Copyright [Public Library Photocopying Licence](#)). This licence provides libraries with pre-authorization to photocopy portions of published works, while also providing some compensation to their creators and publishers. In some cases the licence allows libraries to copy more than would be permitted under the Copyright Act. The Access Copyright Licence applies to both staff and patrons, as follows:

- (a) Copies can only be made in paper form;
- (b) Staff and patrons may copy up to 10% of a published work, or the following, whichever is greater:
 - an entire chapter of a book, which cannot be more than 20% of the book;
 - an entire newspaper article or a page from a newspaper;
 - one short story, play, poem, essay, or article from a book or periodical containing other published works;
 - one entire entry from an encyclopedia, dictionary, or reference book.

6.3.2 If a library patron or staff member wants to copy in a manner that is not covered under the Access Copyright [Public Library Photocopying Licence](#), library staff can request permission (which may be at an additional cost) through Access Copyright’s [Title Search & Permissions Tool](#).

6.4 Signage

Section 30.3(1)(c) of the [Copyright Act](#) states that a library does not infringe copyright where “there is affixed ... a notice warning of infringement of copyright”. Accordingly, libraries must use the warning signs provided under the Access Copyright Licence. See the [Print Copying Information](#) poster.

7.0 GUIDELINES / RECOMMENDATIONS

Determining if Copying follows Fair Dealing Guidelines

The Supreme Court of Canada in the case of [CCH Canadian Ltd. v Law Society of Upper Canada, 2004 SCC 13](#) cited the following six factors to help determine whether a particular dealing is “fair” under the [Copyright Act](#) as Fair Dealing is not clearly defined and is a matter of judgment.¹

- 1. The purpose of the dealing** – The purpose of the dealing will be fair if the copying is for the allowable purposes, namely research, private study, criticism review or news reporting. These allowable purposes should not be given a restrictive interpretation. What is required is an objective assessment of the real purpose in copying the work.
- 2. The character of the dealing** – If multiple copies are being widely distributed, this will tend to be unfair. If a single copy is used for a specified legitimate purpose, then it is easier to conclude that it is a fair dealing. It may be relevant to consider the custom or the practice in a particular trade or industry to determine whether or not the character of the dealing is fair.
- 3. The amount of the dealing** – If the amount copied from the work is trivial; it is more likely to be considered fair. However, it may be possible to deal fairly with a whole of certain types of works. For example, there may be no other way to criticize or review a photograph or a research journal article unless the whole work is copied.
- 4. The nature of the work** – It is more likely to be “fair” to copy a published work as opposed to an unpublished or confidential work.
- 5. Available alternatives to the dealing** – If there is a non-copyright protected equivalent to the work that could have been used instead of the copyright work, this may weigh against a finding of fairness.

¹ <http://www.canlii.org/en/ca/scc/doc/2004/2004scc13/2004scc13.html>

6. **The effect of the dealing on the work** – If the copied work is likely to compete with the original work on the market, this may suggest that the dealing is not fair.

8.0 REGIONAL GUIDELINES AND PROCEDURES

In consultation with the Provincial Office, Regional Directors may develop additional guidelines and procedures consistent with and necessary to support this policy.

9.0 REFERENCES

[New Brunswick Public Libraries Act](#). Government of New Brunswick.

[Copyright Act](#). Government of Canada.

[CCH Canadian Ltd. v Law Society of Upper Canada, 2004 SCC 13](#). Canadian Legal Information Institute.

[Public Library Photocopying Licence](#). Access Copyright.

[Title Search & Permissions Tool](#). Access Copyright.

[Print Copying Information Poster](#). Access Copyright.

Related NBPLS Policies:

[Policy 1052 – Access to Library Collections](#). New Brunswick Public Library Service.

10.0 CONTACTS FOR MORE INFORMATION

NBPLS Provincial Office, (506) 453-2354

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