

ST. MARY'S UNIVERSITY COLLEGE
POLICY TYPE: ACADEMIC AFFAIRS

POLICY TITLE: Copyright Policy	GUIDELINE NUMBER: Section [#TBA]
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RESPONSIBILITY: ad hoc Committee on Copyright	AUTHORIZATION: Academic Council

A. OVERVIEW

St. Mary's University College (StMU) is committed to ethical behaviour and integrity in all activities including the use of copyrighted materials. All individuals at StMU using copyrighted materials will comply with the federally legislated Copyright Act, including the protection of the rights of ownership of copyright owners and recognition of user rights in relation to copyrighted materials owned by others.

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C. POLICY

1. Terms & Definitions

- *Copyright Act* means the federal act of Canada governing matters related to governing matters related to copyright, including regulations thereunder, the *Copyright Act of Canada*;
- *Copyright Law* refers to the combined body of legal practice governing matters related to copyright including not only federal statutes and regulations but also case law which interprets the *Copyright Act*;
- *Copyrighted Material/Work* means any original literary, dramatic, musical, or artistic work created with skill and judgment and fixed in tangible form;
- *Copyright Owner/Rightsholder* means the legal owner of a copyrighted work who can assert the rights of ownership;
- *Fair Dealing* is the right, within limits, for the purpose of research, private study, criticism, review, or news reporting, to reproduce a substantial amount of a copyrighted work without permission from or payment to the copyright owner;
- *Infringement* means the performance by any person, without the consent of the owner of the copyright, of anything that the *Copyright Act* specifies the owner of the copyright has the exclusive right to do (see also Terms & Definitions "Rights of Ownership");
- *Licenses* are agreements between copyright owners or their licensing agents and end-users to allow for the use of their copyrighted works by granting prior permission that may be subject to certain terms. StMU has entered into agreements with some copyright owners to allow the ongoing use of some specific copyrighted material;
- *Licensing Agent / Agency* means an individual or organization authorized by the copyright owner to act on their behalf;
- *Moral Right(s)* refer(s) to several related rights of a work's author or creator, including among others the rights to claim authorship, to maintain the integrity of a work free from distortion or other modification prejudicial to the author/creator's reputation, and to prevent the use of a work in association with a particular cause or institution;
- *Rights of Ownership* in relation to a copyrighted work, Section 3(1) of the Copyright Act refers to copyright ownership as the

sole right to produce or reproduce the work or any substantial part thereof in any material form whatever, to perform the work or any substantial part thereof in public or, if the work is unpublished, to publish the work or any substantial part thereof. Moreover, copyright owners are solely entitled to exploit rights related to translation, conversion, recording, adaptation, communication by telecommunication, public exhibition, rental rights, and have the right to authorize any of the above. Respectively, Sections 15, 18, and 21 of the Copyright Act deal with performer's rights, rights of sound recording makers, rights of broadcasters;

- *StMU community* means any staff person, faculty, student, or administrator making use of StMU campus facilities;
- Use means the reproduction, transmission, public performance, display, and translation of a copyrighted work;
- *User* is any individual and/or party that uses copyrighted material owned by another;
- *User Rights* means specific legal rights provided by the *Copyright Act* and *copyright law* to facilitate limited use of copyrighted works without the need for the consent of the copyright owner.

2. Purpose

This Policy does not deal with questions of ownership of copyrighted materials created by StMU faculty, staff, or students. Also, this policy does not impinge on or restrict the use of materials no longer under copyright or which are in the public domain.

This Policy outlines StMU's position on the use of copyrighted material by members of the StMU community. Effectively, this Policy will:

- 2.1. state StMU's position on the legal use of copyrighted materials by members of the StMU community;
- 2.2. state StMU's position on the interpretation and application of the Copyright Act and related laws;
- 2.3. serve to limit the potential legal liability of StMU and its employees for copyright infringement through the exercise of due diligence in use of copyrighted material; and
- 2.4. serve as the basis to identify and implement specific procedures to effect compliance with copyright law.

3. Scope

This policy applies to all members of the StMU community

4. Policy Statement

StMU is committed to compliance with copyright law. The Copyright Act of Canada, relevant case law precedents, as well as related StMU policies and procedures govern the utilization of all copyrighted works by members of the StMU community. All employees and students of StMU are required to inform themselves of their legal duty and will not use copyrighted material unless permitted under the copyright law or unless prior permission has been obtained from the copyright holder.

StMU takes infringement of copyright seriously. Incidents of non-compliance with this policy by StMU staff or faculty may lead to disciplinary action up to and including termination, under StMU policy. Students who are in violation of copyright may be disciplined under the policies and procedures governing *Academic Misconduct & Student Conduct* as outlined in the StMU Academic Calendar.

4.1. Use of Copyrighted Works/Materials

Some uses of copyrighted materials may fall within user rights under the Copyright Act, for which no prior permission is required, such as Fair Dealing and other exceptions. However, all uses of materials including copyrighted and public domain materials require attribution and respect of authors' moral right.

a. Substantial vs. Insubstantial Copying

Copying an insubstantial amount of a work is allowed under copyright law. Quality as well as quantity is considered in what constitutes an insubstantial amount of copying from a work. A chart that summarized an entire article would be considered substantial.

b. Use of Licensed Works

In some cases, StMU has acquired licenses allowing members of the StMU community to access specific works for limited uses pursuant to negotiated contract terms.

c. Fair Dealing

StMU encourages full use of *fair dealing* in the context of copyright law. *Fair dealing* as defined in the Copyright Act protects the right of the public to make copies of copyrighted material, beyond an insubstantial amount of the work, for private study, research, review, criticism, and news reporting. StMU fully supports *fair dealing* principles that have been established in case law which provide 6 criteria for determining whether fair dealing or copyright infringement have taken place:

- *The Purpose of the Dealing* - Is it for research, private study, criticism, review or news reporting?
- *The Character of the Dealing* - How were the works dealt with? Was there a single copy or were multiple copies made? Were these copies distributed widely or to a limited group of people? Was the copy destroyed after being used? What is the general practice in the industry?
- *The Amount of the Dealing* - How much of the work was used? What was the importance of the infringed work?
- *Alternatives to the Dealing* - Was a "non-copyrighted equivalent of the work" available to the user? Was the dealing "reasonably necessary to achieve the ultimate purpose"?
- *The Nature of the Work* - Copying from a work that has never been published could be more fair than from a published work "in that its reproduction with acknowledgement could lead to a wider public dissemination of the work - one of the goals of copyright law. If, however, the work in question was confidential, this may tip the scales towards finding that the dealing was unfair."
- *Effect of the Dealing on the Work* - Is it likely to affect the market of the original work?

d. Exceptions for Educational Institutions

The Copyright Act permits use of copyrighted materials without permission of or payment to the rights holder in the following manners:

- manually reproducing material for display on a whiteboard or similar surface, or making a copy for projection, for the purpose of education;
- reproducing or performing a copyrighted work in the conduct of a test or examination.

The educational exemptions above, other than manual reproduction, do not apply if the work is commercially available in an appropriate form for the purpose.

The Copyright Act also permits, without payment to or permission of the copyright owner, the live performance, primarily by students, or the performance of a sound recording, or of a broadcast work at the time of its public broadcast. This exemption applies to performances on campus, for educational purpose, not for profit, and before an audience consisting primarily of students and instructors of StMU.

e. Other Exceptions

In the Copyright Act of Canada there are provisions for those with perceptual disabilities. Members of the StMU community who are interested in such provisions are advised to consult Section 32, Persons with Perceptual Disabilities, of the Copyright Act., and/or consult staff in the StMU Learning Centre, Library and/or Bookstore.

4.1.1. Seeking Permission

If none of the above Fair Dealing or other provisions apply, then permission from the copyright owner must be obtained before distributing copyrighted material in a course (unless the copy is an insubstantial portion of a whole). Permission can be obtained by contacting the copyright owner or the *copyright agency/ Licensing Agent* designated by the copyright owner (e.g. Access Copyright).

Where information and/or clarification are required to facilitate compliance, users should consult the staff in the StMU Library and/or Bookstore.

4.2. Use of Works/Materials not under Copyright

a. Public Domain

StMU encourages and supports the use of works that are in the *public domain*. A work is in the public domain if:

- it is not covered by intellectual property rights at all;
- the intellectual property rights are forfeited; or
- the intellectual property rights have expired.

In Canada the copyright term is "the life of the author" plus 50 years (Copyright Act (R.S.C., 1985, c. C-42) - Term of Copyright).

b. Open Access & Creative Commons

StMU encourages and supports the use of works that have been published under Open Access principles or a Creative Commons license. However, such works still remain under copyright. While the access terms and conditions of use of such materials are generous (copying & distribution are allowed and permission is not required), attribution for the use of such copyrighted works is required.

5. Related Procedures

- 5.1. *Academic Misconduct* Policy (see *StMU Academic Calendar*);
- 5.2. Copying Guidelines [Library Best Practices Document];
- 5.3. Print Copies: Course Packages / Handouts Procedures [Bookstore Procedural Document] {pending / optional?};
- 5.4. Securing Permissions [Bookstore Procedural Document] {pending / optional?};
- 5.5. Library Course Reserves Policy;
- 5.6. Guidelines for Using Images [Library Best Practices Document];
- 5.7. Taping a Radio or TV Program [Library Best Practices Document];

6. References

6.1. Statutes

- a. Copyright Act of Canada, R.S.C., 1985, c. C-42 <<http://laws-lois.justice.gc.ca/eng/acts/C-42/>>;
- b. Term of Copyright in the Copyright Act, R.S.C., 1985, c. C-42 1997, c. 3, s. 6 <<http://laws-lois.justice.gc.ca/eng/acts/C-42/page-6.html#h-6>>;
- c. Fair Dealing in the Copyright Act, R.S.C., 1985, c. C-42 1997, c. 29, s. 1 & 2 <<http://laws-lois.justice.gc.ca/eng/acts/C-42/page-21.html#h-24>>;
- d. Educational Institutions in the Copyright Act, R.S.C., 1985, c. C-42 1997, c. 29, s. 4 – 5 <<http://laws.justice.gc.ca/eng/acts/C-42/page-22.html#h-26>>;
- e. Libraries, Archives & Museums, R.S.C., 1985, c. C-42 1997, c. 30.1, s. 1 – 4 <<http://laws-lois.justice.gc.ca/eng/acts/C-42/page-25.html#h-27>>;
- f. Libraries, Archives & Museums in Educational Institutions & the Copyright Act, R.S.C., 1985, c. C-42 1997, c. 30.4, s. 1 – 4 <<http://laws-lois.justice.gc.ca/eng/acts/C-42/page-25.html#h-29>>;
- g. Machines Installed in Educational Institutions, Libraries, Archives & Museums & the Copyright Act, R.S.C., 1985, c. C-42 1997, c. 30.4, s. 1 – 4 <<http://laws-lois.justice.gc.ca/eng/acts/C-42/page-27.html#h-28>>.

6.2. Case Law

- a. CCH Canadian Limited v. Law Society of Upper Canada, [2004] 1 S.C.R. 339, 2004 SCC 13 <<http://scc.lexum.org/en/2004/2004scc13/2004scc13.html>>.

6.3. Other Documents of Note

- a. Budapest Open Access Initiative <<http://www.soros.org/openaccess/read.shtml>>;
- b. Berlin Declaration on Open Access to Knowledge in the Sciences & Humanities <<http://oa.mpg.de/lang/en-uk/berlin-prozess/berliner-erklarung/>>;
- c. Creative Commons Licenses <<http://creativecommons.org/licenses/>>.