

Information Bulletin #1 Copyright for Archivists

Copying for research under “fair dealing”

Research is a core activity in archives. Copying items in archival holdings is an integral part of archival research. What can be copied for research without infringing copyright has been broadened considerably as a result of a 2004 Supreme Court of Canada decision. The *CCH Canadian Ltd. V Law Society of Upper Canada case* (hot link to:

<http://scc.lexum.umontreal.ca/en/2004/2004scc13/2004scc13.html>) interpreted “fair dealing” under the *Copyright Act*, established a new concept of “user’s rights” and gave “research” a broad and liberal interpretation. The Supreme Court interpreted “research” broadly enough to apply to many forms of archival copying. In the *CCH case*, copying by a law library for lawyers was found to be “fair.” If copying for lawyers engaged in practicing law is “research” then copying by, or for, researchers in archives is almost certainly also “research.” The Supreme Court’s decision describes the factors that influenced it in deciding that the copying for legal “research” was fair. The same factors will apply to determining whether archival “research” is fair. In the *CCH case*, the Supreme Court of Canada was influenced toward a finding of fairness because:

- only a single copy was made
- the copy was made for one of five fair dealing purposes¹:
research, private study, criticism, review or news reporting
- the purpose was identified in advance to staff
- discretion was used as to the amount copied (The Supreme Court stated that copying an entire work may be fair if the whole work is needed to conduct research, criticize or review the work. Examples of the kind of works that often need to be consulted in their entirety are a photograph, a map, an article in a journal or newspaper, a stamp or a letter. Research cannot be conducted on a corner of a map or a section of a photograph, for example. For the purpose of research or private study, it may be essential to copy an entire academic article. The Supreme Court also noted that requests for substantial copying in cases where the whole work is not required in order to research, criticize or review it were referred to staff and could ultimately be refused.

¹ Addendum: Effective November 7, 2012 fair dealing purposes were expanded to eight and they now also include parody, satire, and education.

Examples given were copying in excess of 5% of a book, or more than two citations from the same book.)

- the single copy was provided on a not-for-profit basis. The fee charged for copying only covered the costs of the supplying library.