

Fair dealing in Canada, Part one

Resource guide

Grow | Protect | Operate | Finance

Fair dealing for producers

UNDERSTANDING FAIR DEALING IN CANADA

Fair dealing is a legal principle under the *Canadian Copyright Act* that allows the use of copyrighted material without permission in certain circumstances. Unlike "fair use" in the United States, fair dealing applies only to specific purposes and follows a two-step legal test. This guide provides a practical checklist for film producers considering fair dealing in their projects.

FAIR DEALING CHECKLIST

Step 1: Does the use fall under an enumerated purpose?

Your use of copyrighted material must fit within one of these eight purposes:

1. Research
2. Private study
3. Education
4. Parody
5. Satire
6. Criticism
7. Review
8. News reporting

Key consideration: Documentary filmmakers often qualify under "criticism," "review," "news reporting," or "education."

Step 2: Evaluating fairness – The six-factor test

If your use qualifies under Step 1, assess its fairness using these factors:

1. Purpose of the dealing – Is it for commercial or non-commercial use? Commercial use may weigh against fairness.
2. Character of the dealing – How is the work being used and disseminated? Limited use in a transformative context (e.g., analysis, commentary) is more defensible.
3. Amount of the dealing – Have you used only what is necessary? Less is better. Avoid extensive or highly recognizable excerpts.

4. Alternatives to the dealing – Could the purpose be achieved without using the material? If alternatives exist, fair dealing may not apply.
5. Nature of the work – Was the work publicly available? Using widely distributed works (e.g., published songs or films) is more likely to be fair.
6. Effect of the dealing on the work – Does your use harm the market for the original work? If the use substitutes for the original, it is less likely to qualify.

Consider using small portions, providing commentary, and ensuring the use is transformative strengthens your fair dealing claim.

PRACTICAL TIPS FOR FILM PRODUCERS

- Document your fair dealing analysis | Keep records of why and how you used copyrighted material under fair dealing.
- Be mindful of music use | Music is a high-risk area. Avoid extensive use of recognizable portions.
- Prepare for legal and E&O review | Errors & omissions insurers will scrutinize your fair dealing claims. Legal consultation is recommended.
- Consider licensing as a backup – If the risk is high, licensing may be a safer option.

For more information on this topic, please reach out to the authors, [Bob Tarantino](#) and [David Steinberg](#).