

Quick reference guide to copyright

Five questions to ask, when attempting to use material



Question 1: Is the material you wish to copy still protected by copyright?

The first question to consider is whether the term of copyright has elapsed:

The Canadian Copyright Act provides that copyright protection automatically exists in every original literary, dramatic, musical and artistic work when it is created. In most cases, protection lasts for the life of the author plus 50 years (Copyright Act s. 6), after which it is often referred to as being in the *public domain*. Copyright also subsists in certain “non-traditional” subject matters, such as performances, sound recordings, and broadcast signals, where the clock generally starts from the first performance of the work. Much of the material that you will use in your research and teaching will fall under Canadian copyright protection. You can, however, use the [Canadian Copyright Database](#) to perform a quick search to see if protection exists on a given work.



For example, if you are an instructor, you will need to follow certain steps before providing materials to your students, no matter if you are [creating course packs](#), if you are using the [Learning Management System](#) (LMS), or if you are presenting certain [copyright-protected materials in class](#).

See the [Term of Copyright](#) section of the Act for additional details, as well as our [Copyright Website](#) and the [Canadian Intellectual Property Office](#) website.

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Question 2: Is the proposed use “substantial”?

The second question concerns how much of the original work you wish to use and if it is “substantial:”

Here is where it can get complicated. Copyright only applies to the reproduction of the entire work “or a substantial part thereof” ([Copyright Act s. 3](#)). Copying that is not substantial does not require permission or further payment. However, what exactly is “substantial” within the meaning of this Act? Unfortunately, the Copyright Act does not provide a specific definition and therefore what is deemed substantial is a matter of degree and context. It includes considerations such as what it is you are copying, how it relates to the original from which it is taken, the amount you plan to copy and what you wish to do with it. It is a case-by-case situation.



For more guidance on how to ascertain if the proposed reproduction is substantial, see [Alternatives to Copyright](#).

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Question 3: Does permission exist in the form of a licence?

The third question determines the use articulated in any licence covering the material. If what you want to use is licenced, and the use that you propose is sanctioned by the licence (two separate questions), then you will be able to use the material without further permission or payment.



There are many ways use of work can be licenced:

The University of Ottawa Library has negotiated digital licences for the University community, for a large volume of online articles and e-books. Search the [library catalogue](#) for the work, the journal or book for example, containing what you wish to copy. The catalogue record displays the holdings, both the physical volumes in our library collections and the subscription journal or e-book package that includes our digital versions of the work. It is often the case that specific works are included in more than one licenced package each with different permissible use requirements. For more information, see [Using Electronic Resources](#).

Another simple check is to see if the work includes a Creative Commons Licence. With the increase in open access publishing, Creative Commons is becoming an easy, intuitive and popular option available for authors to indicate the use they permit for their work. Visit creativecommons.org for more information about Creative Commons and to initiate the process of securing a licence for your own work.

You can also visit the [Scholarly Communications website](#) and [Alternatives to Copyright](#) for additional information.

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Question 4: Is the use allowed under a copyright law exception?

The fourth question is to look to the Copyright Act for a statutory exception permitting use. In the education context, there is considerable scope for copying, without seeking consent from the rights holder, provided by the Act and clarified by several Supreme Court decisions.



For the University of Ottawa, two of these exceptions are of major importance. Consult the [Copyright Act](#) and the [Copyright Website](#) for more information, as well as additional exceptions.

a) Fair Dealing

This is perhaps the most significant statutory exception, which in its *2004 CCH Canadian v. Law Society of Upper Canada* ruling, the Supreme Court indicated is “always available” to users, provided applicable requirements are met.

To fall within this exception two criteria must be addressed:

1. The dealing must be for an allowable purpose; one of research, private study, education, parody, satire, criticism or news reporting, and
2. The dealing itself must also be “fair”; having regard to: the purpose of the dealing; the character of the dealing; the amount of the dealing; the nature of the work; available alternatives to the dealing; the effect of the dealing on the work.

This is obviously a fact-specific, nuanced assessment. **See the University’s [Fair Dealing Guidelines](#) for more information, as well as [For Instructors](#).**

b) Education Exceptions

The Copyright Act recognizes that creating an engaging learning environment necessarily demands the use of information in order to be effective. The Educational Institutions exceptions allow displaying, and

in some cases telecommunicating or copying material for the purpose of education or training on the premises of the institution primarily for an audience of students.

Additional restrictions may apply in some circumstances. See the [Educational Institutions exception of the Copyright Act](#), and [For Instructors](#) for additional details. For more information, please visit our [Exceptions to copyright page](#).

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Question 5: Do you need to secure copyright clearance?

When all other options enabling the reproduction of a work have been exhausted, seeking clearance from the copyright holder is required.



Before initiating a process to seek clearance, determine if there is an alternate way to make the material available without reproducing it, which will satisfy your purposes. For example, links to many resources available online can be provided by email, or in a lesson within the LMS – see [Linking to full-text articles and e-books](#).

It is best to secure clearance in writing. Keep a copy for your own records and indicate on the copy you make once cleared that it is used with permission. Fees or tariffs might be required and always add time, as much as 6 to 8 weeks or more to the process. Sometimes clearance is not granted or cannot be secured in a timely fashion and choosing an alternative resource will be required.

If you are an instructor, you are most likely protected by the fair dealing exemption. However, if this is not the case, you can contact the [Copyright Office](#) [contact information below] to assist you with securing copyright clearance.

If you are a student and you are writing a thesis or dissertation, and the material you are trying to use does not comply with the fair dealing provisions, it is your responsibility to obtain permission from the copyright holder. Simply follow the guidelines outlined by [Library and Archives Canada](#). Furthermore, University staff will generally be subject to the same guidelines as instructors and faculty.

Consult the [Instructors](#) pages on our [Copyright Website](#) for procedural information. You can also contact the [Canadian Intellectual Property Office](#) directly and fill out their general correspondence form if you have any other questions.

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