



NBCC

Quick Copyright Guide

NBCC is bound by, and operates under, the **Copyright Act**. The use of any copyright material, other than that permitted under the **Copyright Act**, is **strictly** prohibited.

The **Copyright Act** contains **fair dealing** exceptions that allow an individual to copy from copyright-protected works for the purpose of education, research, private study, criticism, review, news reporting, satire or parody. **The original source must be cited.** The copying is limited to short excerpts.

A short excerpt means any **one** of the following:

- a) Up to 10% of a copyright-protected work
- b) One chapter from a book
- c) A single article from a periodical
- d) An entire artistic work from a copyright-protected work containing other artistic works
- e) An entire newspaper article or page
- f) An entire single poem or musical score from a copyright-protected work containing other poems or musical scores
- g) An entire entry from an encyclopedia, annotated bibliography, dictionary or similar reference work

Examples:

- 1) Teachers, instructors, and staff members in non-profit educational institutions **may** communicate and reproduce, in paper or electronic form, short excerpts from a copyright-protected work for the purposes of research, private study, criticism, review, news reporting, education, satire and parody.
- 2) They **may** copy or communicate short excerpts from a copyright-protected work under these guidelines for the purpose of news reporting, criticism or review. **If given** in the source, include the name of the author or creator of the work.
- 3) They **may** make a single copy of a short excerpt from a copyright-protected work to be provided or communicated to **each student** enrolled in a class or course.
- 4) They **may** post to a learning or course management system that is **password protected** or otherwise restricted to students of a school or post-secondary educational institution.
- 5) This may be a **class handout** or part of a **course pack**.

Note:

- 1) Copying or communicating **multiple** short excerpts from the same copyright-protected work with the intention of copying or communicating substantially the entire work is **prohibited**.
- 2) Copying or communicating that exceeds the limits in these *Fair Dealing Guidelines* may be referred to a supervisor or other person designated by NBCC for evaluation with a final decision made based on all relevant circumstances.
- 3) Any fee charged for communicating or copying a short excerpt from a copyright-protected work must be intended to cover only the costs of the institution, including overhead costs.

Contractual Obligations vs. Users' Rights

Contractual obligation trumps a user's right in the *Copyright Act*.

Contracts can be standard-form agreements, "**click**" or "**shrink-wrap**" licenses that accompany the work at the time of purchase, or negotiated contractual agreements.

With standard-form agreements, "**click**" or "**shrink-wrap**" licenses, the act of removing the wrap or clicking, "**I agree**" signals the agreement of the user to the terms in the contract of use.

For example, the YouTube Usage Agreement states:

"You shall not download any Content unless you see a "download" or similar link displayed by YouTube on the Service for that Content."

Outside Copy Shops

Using an outside shop to produce copies or course packs **is not** permitted without royalties under *fair dealing*. An outside copy shop is a commercial operation that is intended to make a profit, therefore the "dealing" **would not** be considered "fair."

Alternatives:

Make copies and course pack copies (within the limits of the policy) internally, as long as any fees cover no more than the costs of production, including overhead costs.

Under the concept of *Fair Dealing* you can scan articles and chapters for placement on BlackBoard.

Relationship between Limits

An instructor has a legal copy of the work, and wants Chapter 1 put on the LMS (Blackboard) for one course, **but** wants Chapter 10 on the LMS for a **completely** different course. Is this systematic copying or is it fair?

This is fair under the Act.

The relevant “purpose” of the dealing is the end user’s purpose - in this case, the student, not the instructor. It would be unjust to deprive students of their *fair dealing* rights based on the fact that an instructor teaches more than one course.

Copying for Instruction

An instructor can copy (under *Fair Dealing*) in order to display a work protected by copyright.

This permits the use of **whiteboards** and similar tools and overhead projection using a device such as an LCD screen.

The work **can only be used for the purpose of education and training.**

The work **cannot be commercially available** in a medium that is appropriate for the purpose of instruction. If it is, an institution must buy a copy rather than make one.

Copying for Tests and Examinations

Copyright Act Sections 29.4(2) and (3) contain a user’s right permitting copying for the purposes of tests and examinations.

Instructors may copy, translate, communicate electronically or perform any copyright-protected work for a test or examination **provided the work is not already commercially available in an appropriate medium for the purpose of a test or examination.**

Persons with Perceptual Disabilities

Students with perceptual disabilities can be provided with alternate formats such as audio books, Braille, and e-text.

Educational institutions **may not make** a large-print book for a student with a perceptual disability without permission from the copyright owner.

Translation, adaptation, and performance in public for the purpose of serving students with perceptual disabilities are permitted if the work is not already commercially available in that format.

Playing Sound Recording, Radios & Televisions on NBCC Premises

Instructors may play sound recordings, radios and televisions subject to all of the following conditions:

- a) The playing of the recording, radio or television program must take place on the premises of an educational institution
- b) It must be for educational or training purposes
- c) It must not be for profit
- d) It must take place before an audience consisting primarily of students of the educational institution, persons acting under its authority, or any person who is directly responsible for setting curriculum
- e) It must not involve a "motive of gain"



Mash-Ups

Anyone may use copyright-protected works to create new works:

- This users' right is referred to in the **Copyright Act** as "non-commercial user-generated content."

The following conditions apply to the creation of non-commercial user-generated content:

- It can only be used for non-commercial purposes
- The original source must be mentioned, if it is reasonable to do so
- The original work used to generate the content must have been acquired legally
- The resulting user-generated content does not have a "substantial adverse effect" on the market for the original work



Documentaries

A person acting under the authority of a non-profit educational institution may make a single copy of a documentary **only at the time** the program is aired by the broadcaster or communicated over the Internet.

- An instructor may examine the copy for up to 30 days to determine whether the copy will be used on the premises of an educational institution for educational purposes.
- If the copy is shown on school premises at any time (including within the 30-day evaluation period) **or if it is not erased after 30 days, a royalty payment must be made.**
- The copy may be viewed only by an audience consisting primarily of students of the educational institution and is subject to the terms and conditions relating to the use of the copy and to payment, whether or not it is ever used.
- NBCC is required to provide information related to the making, erasing, performing and method of identification of the copy to the copyright owner or a collective representing the owner.
- Educational Rights Collective of Canada (ERCC) is the collective that collects copyright royalties for off-air recordings.

Fair Dealing with Documentaries

Fair dealing applies to all copyright-protected works, including documentaries:

- The limits in the *Fair Dealing Policy*, therefore apply
- For example, up to 10% of a documentary can be reproduced and shown for educational purposes
- Using an entire documentary is not permitted under *fair dealing*

Showing a DVD or Video on NBCC Premises

"Audiovisual work" is commonly used to refer to what the *Copyright Act* calls "cinematographic works".

- The *Copyright Act* defines "cinematographic work" as including, *"any work expressed by any process analogous to cinematography, whether or not accompanied by a soundtrack"*
- Cinematography means the art of making movies, videos and film.

The **Copyright Act** permits showing an audiovisual work such as a DVD or video as long as the work is not an infringing copy or the person responsible for the showing has no reasonable grounds to believe it is an infringing copy.



Netflix and iTunes

The wording of both the Netflix and iTunes end-user license agreements would seem to not allow the use of their videos in the classroom. **Videos from Netflix and iTunes are not be used in the classroom without written permission from Netflix and iTunes.**

Copying an Audiovisual Work at Home

Instructors **cannot** copy an audiovisual work at home and then show it in the classroom.

- Making a copy of an audiovisual work without permission **is an infringement** of copyright in Canada
- The resulting copy **is not** a legal copy

Instructors can, however, show a legally obtained copy in the classroom.

A legally obtained copy includes:

- a copy purchased or rented from a retail store
- a copy borrowed from the library
- a copy borrowed from a friend
- a YouTube Video

Communication of Copyrighted Material

The *Copyright Modernization Act* is intended to make sure that the “*communication*” right of copyright holders is not a barrier to distance education.

- It permits lessons to be streamed live to students or recorded and made available online for students at a time of their choosing.
- Similarly, in-person students may record and watch the lesson live or again at a later time.

Historically, the owner of copyright in a work ordinarily has the sole right to communicate that work to the public.

The *Copyright Modernization Act* allows instructors to communicate a lesson that includes copyright material without needing permission from the copyright owner, or the payment of royalties.

- As long as the audience is “only students who are enrolled in a course of which the lesson forms a part” or staff and faculty of the educational institution.

It is important to note that the *Copyright Modernization Act* does not authorize the copying of materials to create the lesson itself.

- Copyright materials in a lesson must be allowed by some other exception in the *Copyright Act*.

Both the student and the educational institution are required to **destroy** any recording of copyright-protected material contained in an online lesson **within 30 days** of the students enrolled in the course receiving their final evaluations.

Publicly Available Material on the Internet

“Publicly available” materials are those posted online by content creators and copyright owners without any technological protection measures, such as a password, encryption system, or similar technology intended to limit access or distribution, and without a clearly visible notice prohibiting educational use.

The **Copyright Act** permits instructors and students to save, download and share publicly available Internet materials, as well as perform and communicate that material to students or others within their education circle.

- Students and educators are required to cite the source of the Internet materials they use.

Performing Music

The **Copyright Act** permits the public performance of music in schools, when it is “in furtherance of an educational object.”

- Performances that are not in furtherance of an educational object must be authorized by the copyright owner.

The following uses of live and recorded music are permitted by the **Copyright Act**:

- In-school assemblies (*e.g. a recording of “O Canada”*).
- By a student in a presentation to other students, instructors, or parents.
- In demonstration activities by students for which any admission fee charged covers costs, but does not make a profit.
- During school hours for teaching/learning (*e.g. music/dramatic arts classes*).
- Before and after school, if the use is for educational purposes (*e.g. school radio operated by students for credit and supervised by an instructor*).



Music Requiring Permission

The following uses of live and recorded music in educational institutions are not permitted by the *Copyright Act* and therefore require permission and payment:

- At events such as a dance, fashion show, or sporting event.
- At an event where the admission fee is intended to make a profit.
- Background music (*e.g. in the classroom, cafeteria, halls, over the PA system, at events such as fairs, carnivals, socio-cultural events*).



Student Created Works

Any original work created by a student is copyright-protected.

- Be it in the form of an essay, a video or DVD, a sound recording, website, artwork, or other material protected by copyright.

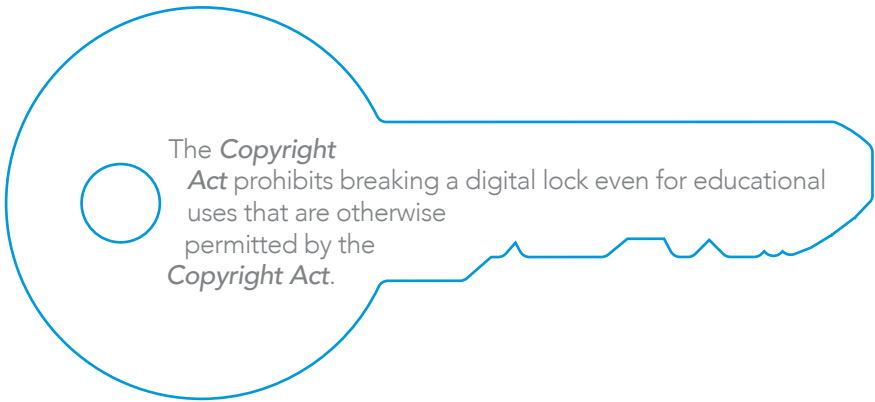
designs COPYRIGHT licensing
INTELLECTUAL
ideas PROPERTY
TRADEMARKS
unique compositions
art creations
VIDEO INVENTIONS
ORIGINAL rights
music

The student must authorize the further use of his or her work.

- Uses, such as in a publication of NBCC, an instructor workshop, or in a website posting, require written permission from the student.

Digital Locks

A digital lock is a technological protection measure (such as encryption or a password) that restricts the ability of users of digital content from sharing or copying the content.



For further information please contact staff at your campus Library/Learning Commons.

