

Copyright information for students

All copying must comply with the Canadian [Copyright Act](#). The *Copyright Act* protects the rights of copyright holders as well as provides rights for copyright users. Copyright covers the copying of a work or a substantial part of a work.

In order to provide balance between the rights of copyright owners and users, the *Copyright Act* also provides [exceptions](#) to copyright for the purposes of **research, private study, criticism, review and news reporting**. Copying that qualifies under an exception is not an infringement of copyright.

Copying for Personal Use

Individuals may copy a substantial portion of a copyrighted works or in some cases a whole work for their personal use for the purpose of research or private study without permission under fair dealing. The copying must qualify as *fair* in order for this exception to apply.

In order to provide guidance on fair dealing limits, Grant MacEwan developed the following copying guidelines:

Copying Guidelines

Copyright exists in literary, dramatic, musical and artistic works.

Under the *Copyright Act* the owner of copyright has the exclusive right to reproduce all or a substantial part of a copyrighted work. The copying of such works may infringe copyright. Individuals are prohibited from making copies of all or substantial parts of copyright works without the consent of the owner of copyright.

Fair Dealing

There are exceptions to copyright infringement provided by the *Copyright Act* called fair dealing. This permits the use of a substantial portion of a copyrighted work for the purpose of research, private study, criticism and review, or news reporting.

Under these guidelines you may copy the following for the purposes of **research** or **private study**:

1. Subject to paragraph 3 below, up to 10 per cent of a **Published Work**, other than a textbook produced primarily for the post secondary education market, or the following, whichever is greater:
 - (a) an entire chapter from a book provided that it does not exceed 20 per cent of the book;
 - (b) an entire article from a periodical publication;
 - (c) an entire short story, play, poem or essay from a book or periodical publication;
 - (d) an entire entry from an encyclopedia, dictionary, annotated bibliography or similar reference book;
 - (e) an entire reproduction of an artistic work from a book or periodical publication; and
 - (f) a single musical score from a book or periodical publication.
2. Subject to paragraph 3 below, up to 5 per cent of a **textbook** produced primarily for the post secondary education market, or the following, whichever is greater:
 - (a) an entire chapter from a textbook provided that it does not exceed 10 per cent of the textbook;

- (b) an entire short story, play, poem or essay from the textbook provided that it does not exceed 10 per cent of the textbook; and
- (c) an entire reproduction of an artistic work or a single musical score from the textbook provided that it does not exceed 10 per cent of the textbook.

3. No copies may be made of the following:

- (a) any of the works referred to in paragraphs 1(b) to 3(f) of these guidelines where the publication containing the work does not contain other works. For example, no copy may be made of a play from a publication containing the play but no other work;
- (b) unpublished works;
- (c) proprietary workbooks, work cards, assignment sheets, tests and examination papers;
- (d) instruction manuals;
- (e) newsletters with restricted circulation intended to be restricted to a fee paying clientele; or
- (f) business cases which are made available for purchase.

In certain circumstances, copies may be made of unpublished works and copies that exceed these guidelines under fair dealing without the consent of the copyright owner. Requests for the making of such copies should be directed to the MacEwan Copyright and Licensing Office for evaluation. A determination will be made as to whether the proposed copies are permissible and may ultimately be refused.

Grant MacEwan University is not responsible for copyright infringement by individuals reproducing copyrighted works on campus.

Using Copyrighted Material in an Assignment or Published Article

Under fair dealing, you may copy portions from copyrighted works in order to illustrate a point that you are making in an assignment, a scholarly work, article or blog posting (to name a few contexts) without the permission of the copyright owner. You are required to cite the source of what you use. This is allowed under the "criticism and review" fair dealing purpose in the *Copyright Act*. This is to encourage debate and allow for the free exchange of ideas.

The amount used should be for the purpose of illustrating your larger point and would not normally involve copying an entire work. There may be instances where the entire work is used, such as with a photograph, where using a portion of the work would not be feasible. The fair dealing exception does not change and still applies if your work is published or if content is used in a thesis or dissertation.

You may use copyrighted material in a multimedia presentation for in-class display. If you use a copyrighted audio or video works in your presentation, be careful about posting the work on a publicly viewable web site (such as YouTube or Facebook) without permission of the copyright owners.

Copyright Basics

What is copyright?

Copyright covers the copying of a work or a substantial part of a work. Copyright is an exclusive right given to copyright holders to copy, manipulate, perform or communicate works (including their right to seek compensation for their efforts). In Canada, copyright automatically subsists in any original literary, dramatic, musical and artistic expression in fixed form, regardless of its merit. It is "fixation" that distinguishes between an expression and an idea. Copyright does not extend to ideas, facts or news. Copyright protects the expression of an idea, but not the idea itself.

Copyright does not protect methods, plots, characters, titles, names, short phrases or slogans. Some of these may be able to be protected through trademarks.

There is a public interest component in copyright law that seeks to promote creativity and the dissemination of knowledge, or as the U.S. constitution puts it, “To promote the Progress of Science and useful Arts”. Thus, copyright law seeks to give creators sufficient control over their works and the opportunity to gain from their works so as to give incentive to the creative process and to the wide communication of works.

Also in the public interest, copyright is limited and copyrighted works may sometimes be used without the need to ask permission or pay a royalty. The *Copyright Act* provides a term limit on copyright. In Canada, in most cases, copyright expires 50 years after the death of the creator. It provides rights for users of copyrighted works in the form of [exceptions](#) to copyright.

The *Copyright Act* also provides moral rights for creators. Moral rights protect the right of a creator to be identified as a work’s author, the right to remain anonymous or use a pseudonym. Moral rights protect the integrity of a work and the manner in which a work may be associated so as to prevent the work being affected prejudicially. While the copyright of a work may be licensed or assigned to another, moral rights can only be retained by the creator or waived completely.

Isn’t it enough just to cite a work?

Scholarly practice requires that you cite the works that you use. While this is good practice, citing is not a substitute for acquiring copyright permissions when needed.

Who owns copyright?

The author of a work is usually the copyright owner. A copyright owner may assign or licence rights to a work. In the case of published works, copyright is often assigned to a publisher who then retains the copyright. When seeking permission to use a copyrighted work, keep in mind that the originating author may not be the rights holder.

What is the public domain?

Works in the public domain are all works that are not covered by copyright. These works belong to the public and there are no restrictions on their use. It most often applies to works on which copyright has expired. In Canada, the term of copyright is, in most instances, for the life of the creator plus 50 years (ending on January 1 of the year following the 50-year period). After that, works enter the public domain.

Copyright law is national. Works may be in the public domain in Canada, but not in other countries. In the late 1990s, the term of copyright coverage in the US and most of Europe was revised to life of the author plus 70 years. If a work is copied or used in Canada, the 50-year rule applies. Keep this in mind when using US and European sources that claim ownership over works that are free to use in Canada. If a work is to be used outside of Canada, the laws of the location it will be used apply.

Original editorial, annotative or translation work added to a public domain work will have its own copyright and may affect your ability to use it without permission.

Authors may waive all or part of their copyrights. When an author has waived all rights, the work is in the public domain. When part rights have been waived (such as with a [Creative Commons](#) license) the work may be used within the terms of the license without having to seek permission.

The [Canadian Public Domain Flowchart](#) provides a guide to determining if a work is in the public domain in Canada.

A selection of open and public domain web resources is available on the [copyright links](#) page.

Exceptions to the "50 Year" rule

There are exceptions to the "life plus 50" rule for works by joint authors or unknown authors, unexploited works/posthumous works, government/Crown works, photographs, cinematographic works such as films and videos, sound recordings, performer's performances and communication signals.

Joint authors

- A work enters the public domain 50 years after the last author dies.

Unknown authors

- A work enters the public domain 50 years after it was first published OR 75 years after the work was created - whichever is earlier.

Unexploited works/Posthumous works

- If a creator dies with an unexploited (unpublished) work, the work enters the public domain 50 years after the creator dies.
- If the work was created before 1997, there are three possibilities:
- 1 - If the creator dies, and the work is published prior to 1997, the work enters the public domain 50 years after the work was first published.
- 2 - If the creator dies during the period of 50 years before 1997 and the work has *not* been published by 1997, the work enters the public domain in 2047.
- 3 - If the creator died more than 50 years before 1997 and the work had *not* been published by 1997, the work is already in the public domain.

Government/Crown works

- The work enters the public domain 50 years after it was first published.
- An unpublished government/Crown work retains copyright in perpetuity.
- Federal laws, decisions, and reasons for decisions of federal courts and administrative tribunals are immediately in the public domain. The copy must be accurate and must not be represented as the official version.
- *Please Note:* The Government of Canada has recently declared that works under its copyright may be freely used for non-profit purposes.

Photographs

- Any photograph taken before 1948 is in the public domain.
- The creator of a photograph is the one who owned the negative or original photograph at the time it was made.
- If the creator of the photograph is a natural person, the photograph enters the public domain 50 years after the creator's death.
- For a photograph taken after 1949,
- 1 - if the creator of the photograph is a corporation in which the majority of voting shares are owned by the creator of the photograph (for example, a commissioned photograph), the work enters the public domain 50 years after the creator dies.
- 2 - if the creator of the photograph is a corporation in which the majority of voting shares are *not* owned by the creator of the photograph (for example, a commissioned photograph), the work enters the public domain 50 years after the making of the initial negative or plate from which the photograph was derived or, if there is no negative or plate, the remainder of the initial photograph.

Certain cinematographic works (films or videos, including home videos)

- A cinematographic work which does not have an original arrangement, acting form or combination (such as a home video), and is published within 50 years of its making enters the public domain 50 years after the date of publication.
- A cinematographic work which does not have an original arrangement, acting form or combination (such as a home video), and is *not* published within 50 years of its making enters the public domain 50 years after the date of its making.

- Films and videos which have an original arrangement, acting form or combination enter the public domain 50 years after the death of the creator.
- The rules for determining when a cinematographic work enters the public domain are complicated and depend on when the work was created (before or after 1994) and if the work has an original arrangement or not. See the National Archives of Canada's chart published in *Staff Guide to Copyright* (1999) for specific details.

Sound recordings

- An audio cassette, CD or recording enters the public domain 50 years after the recording was first fixed.
- Music from the public domain can be recorded freely; the resultant recording would be copyrighted for 50 years.
- A recording that is more than 50 years old is in the public domain, but the music itself may not be in the public domain if the composer has not been deceased for 50 years.

Performer's performances

- A performer's performance enters the public domain 50 years after the performance is first fixed or, if it is not fixed, 50 years after it is performed.

Communication signals

- A communication signal enters the public domain 50 years after the signal was broadcast.

Sometimes a copyrighted work has a "blanket permission" statement that allows the free use of the work without the need to get permission. Look inside a book or on the home page of a Web site for a section called Copyright, Permissions, Terms and Conditions, Legal Notices, About Us, etc. to see if such a statement exists.

To find a work in the public domain or a work that can be used without paying royalties, search the Web by the type of work interested in (for example, search for "public domain films"). Verify the Web site's home page under Copyright, Permissions, Terms and Conditions, Legal Notices, About Us, etc. for restrictions before copying, modifying, adapting, distributing or using content.

Parts of this section were adapted from the University of Manitoba copyright website under a Creative Commons licence.

What is fair dealing?

Copyright: substantial vs. insubstantial

Copyright covers the copying of a work or a substantial part of a work. An insubstantial part of a work may always be copied without infringing copyright. The *Copyright Act* does not define what proportion of a work is insubstantial, but keep in mind that the judgment of whether an amount qualifies as insubstantial is one of quality as well as quantity. For example, using a single chart that sums up the entire point of a work may be considered substantial and would not qualify. You would then need to determine whether using the chart qualifies under fair dealing.

Fair dealing provides grounds for the copying of a substantial part of a work or, in some cases, an entire work without permission.

Fair dealing: a user right

The *Copyright Act* seeks to balance the rights of copyright holders and users through [exceptions](#) to copyright. The fair dealing exceptions in the *Copyright Act* state that copying for the purposes of **research or private study, criticism or review and news reporting** is not an infringement of copyright. If the copying is done for one of these purposes and **qualifies as fair**, it does not infringe copyright.

The *Copyright Act* purposely refuses to set clear definitions of what constitutes fair dealing. This provides the freedom for the factors involved in a given situation to determine the legitimacy of a fair dealing claim. In 2004, the Supreme Court of Canada sought to provide tools to assist in the fair dealing assessment. The court outlined six non-exhaustive criteria that may be applied to help determine whether a use of (or dealing with) a work is fair.

Each of the six criteria must be considered when making a fair dealing assessment. No one criterion can be considered alone. It is the overall assessment of all the criteria in aggregate that produces a judgment of fairness. It is worth noting that the simple availability of a work for sale or the availability of a licence does not automatically mean that a use will not qualify as fair dealing. It is not the intention of the fair dealing provisions, however, to discourage the commercial production of learning materials and tools.

Fair dealing is related to the U.S. concept of fair use but differs in significant ways. Fair use in the U. S. system remains a defence of copyright infringement and is a more open-ended concept, with its limits defined by accumulating case law. Fair use provides more opportunities (particularly for educational institutions) for using content without having to ask permission or pay royalties. In Canada, fair dealing exceptions are a *right* of users of copyright, not a *defence* of infringement.

The six fair dealing criteria: CCH v. Law Society of Upper Canada (2004)[1 S.C.R. 339]

The Canadian Supreme Court ruling, [CCH v. Law Society of Upper Canada \(2004\)\[1 S.C.R. 339\]](#), provided a significant clarification of fair dealing and helped emphasize the balance between the rights of copyright holders and users. The ruling stated the need for a broad interpretation of the user exceptions in the *Copyright Act*.

The ruling states:

"It is important to clarify some general considerations about exceptions to copyright infringement. Procedurally, a defendant is required to prove that his or her dealing with a work has been fair; however, the fair dealing exception is perhaps more properly understood as an integral part of the *Copyright Act* than simply a defence. Any act falling within the fair dealing exception will not be an infringement of copyright. The fair dealing exception, like other exceptions in the *Copyright Act*, is a user's right. In order to maintain the proper balance between the rights of a copyright owner and users' interests, it must not be interpreted restrictively. ... 'User rights are not just loopholes. Both owner rights and user rights should therefore be given the fair and balanced reading that befits remedial legislation."

The ruling outlined six principle criteria for evaluating fair dealing:

1. **The Purpose of the Dealing** *Is it for research, private study, criticism, review or news reporting? It expresses that "these allowable purposes should not be given a restrictive interpretation or this could result in the undue restriction of users' rights."*
2. **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 its purpose was accomplished? What are the normal practices of the industry?*
3. **The Amount of the Dealing** *How much of the work was used? What was the importance of the infringed work? Quoting trivial amounts may alone sufficiently establish fair dealing. In some cases even quoting the entire work may be fair dealing.*
4. **Alternatives to the Dealing** *Was a "non-copyrighted equivalent of the work" available to the user? Could the work have been properly criticized without being copied?*
5. **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."*
6. **Effect of the Dealing on the Work** *Is it likely to affect the market of the original work? "Although the effect of the dealing on the market of the copyright owner is an important factor, it is neither the only factor nor the most important factor that a court must consider in deciding if the dealing is fair." A statement that a dealing infringes may not be sufficient, but evidence will often be required.*

“These factors may be more or less relevant to assessing the fairness of a dealing depending on the factual context of the allegedly infringing dealing. In some contexts, there may be factors other than those listed here that may help a court decide whether the dealing was fair”.

While **education** is not currently one of the general fair dealing purposes in the *Copyright Act* (it is part of the proposed reforms currently before parliament) the Supreme Court has directed that these purposes not be interpreted restrictively. Fair dealing covers many of the ways that universities copy and use copyrighted works.

In addition to the general fair dealing guidelines, the *Copyright Act* provides specific exceptions to copyright for education, libraries and archives and for persons with disabilities. These exceptions, in part, allow for the use of copyrighted works in a classroom.

Essential resources

See the MacEwan Copying Guidelines above.

The Canadian Association of University Teachers (CAUT) has issued an excellent overview of fair dealing in a [Fair Dealing Advisory](#). It provides guidance on determining fair dealing limits.

Heritage Canada also provides an in-depth analysis of the CCH decision: [Fair Dealing in Canada](#).

If your copying exceeds the limits outlined in the Copying Guidelines or is not addressed by the Guideline, send a request for a fair dealing assessment to Scott Day, MacEwan Copyright Specialist, MacEwan Copyright and Licensing Office, 497-4277 or days@macewan.ca. A determination will be made as to whether the proposed copies are permissible and may ultimately be refused.