



Copyright at MacEwan

Best Practices for the Digital Age

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Disclaimer: These pages are a guideline only and should not be considered legal advice. This information should not substitute for securing legal advice from MacEwan General Counsel

The Background: What is Copyright?

Copyright is the legal framework for creators to:

- control the use of their works
- receive compensation for the use of their work
- protect the integrity of their work

What does copyright protect?

- Literary, dramatic, musical and artistic works
- Performer's performances, communication signals and sound recordings
- Only original works are protected

What does copyright not protect?

- Ideas, facts or methods
- Names, slogans or short phrases
- Trade-marks, patents, industrial designs or integrated circuit topographies
- Works in the public domain

Who owns copyright?

- Copyright applies automatically to all works in fixed form
- The creator is the owner
- Copyright can be assigned (as with a publication agreement)
- Moral rights can be waived

Copyright is not just about owner's rights

- There is a public interest component to copyright
- In the US, the constitution speaks of copyright "promoting the Progress of Science and Useful Arts"
- Without protection, creators will be less likely to create and distribute their works
- Balance is needed, however, to allow people to use copyrighted material for learning and the creation of new works

There is a time limit on copyright

- Works remain copyrighted for a limited time
- In Canada, it is usually 50 years after the death of the author
- In the US and much of Europe, it is 70 years after the death of the author

What is the public domain?

- When copyright expires, works enters the public domain.
- Works in the public domain belong to the public and are free to use without permission or payment of royalty.
- Works also enter the public domain when an author waives all copyright.

What is fair dealing?

- Fair dealing is similar to **fair use** in the US
- Fair dealing is an **exception** to copyright that seeks to balance owners and users rights
- The extent and the exact limits of fair dealing are not clearly defined

What does fair dealing cover?

Copying for the following purposes does not infringe copyright:

- **Research or private study** [CCA s 29]
- **Criticism, review or news reporting (as long as the source is cited)** [CCA s 29.1, 29.2]

Fair Dealing after CCH

- The Supreme Court addressed fair dealing in *CCH Canadian Ltd. v. Law Society of Upper Canada* (2004)
- The court held that the fair dealing exception is a **user right** (as opposed to a defence in the US)
- The court emphasized an expansive understanding of user rights within fair dealing
- It held that, in order to maintain a balance between copyright owners and users, fair dealing should be given a broad and liberal interpretation

Determining Fair Dealing

The court outlined the criteria for helping determine if a dealing is fair:

- The Purpose of the Use
- The Character of the Dealing
- The Amount of the Dealing
- The Nature of the Work
- The Effect of the Dealing on the Work

Educational Exceptions

In addition to fair dealing, the Copyright Act provides specific exceptions for educational institutions

What can you do in the classroom?

- Copy print material for presentation in class (you can include it in a Powerpoint presentation) [CCA s 29.3]
- Play a sound recording [CCA s 32.2]
- Perform a work, such as a musical or dramatic work [CCA s 29.5]
- Play a live radio or TV broadcast or display internet pages directly from the web [CCA s 29.5]

The fine print

The copying must be:

- For the purposes of education or training by a person acting under the authority of the educational institution
- On the premises of the educational institution
- Be primarily for an audience consisting of students, instructors or staff of the educational institution
- Without the motive of gain, except for cost recovery
- Of a work that is not available commercially in the format used

Copyright Collectives

- Canada favours licensing models for managing copyright
- Collectives help manage permissions for the use of copyrighted works in Canada
- Content owners must opt-out to not be represented by the designated collectives
- This is non-exclusive representation – you can still approach copyright owners directly

Access Copyright

MacEwan has a license agreement with Access Copyright, a collective that represents creators and publishers, that covers the use of copyrighted **print** works.



What can you copy under the Access license?

- Multiple copies of articles or chapters (one for each of your students) within the limits of the license
- Advance permission to copy print material for class distribution or inclusion in a readings coursepack (within set limits and with the payment of a royalty)
- Quick permission to reprint out-of-print books

What is not covered by the Access Copyright license?

- Works owned by publishers or authors on the Access Copyright Exclusions List (authors who have opted out)
- Content from the internet
- Converting of print works to digital
- Posting of content on institutional or private web pages
- One time use materials (e.g. workbooks)
- Purchasable published assignment sheets, tests, etc.
- Instruction manuals
- Print music

You can always copy:

- Works in the public domain
- Insubstantial parts of a work
- All or part of a work under fair dealing
- Any work you have written permission to copy or perform

Remember:

- Students are individuals as well as part of your class
- They have more freedom as individuals to make copies for themselves under the “research and private study” provision of the Copyright Act

Student Assignments

Students can and should use copyrighted content for their assignments

- Sources of works should always be cited
- Images, sound clips and insignificant portions of video works may be used in assignments for class presentation
- Be careful of what content is used if it is to be posted on the internet
- Students are automatically the copyright owners of their work – instructors need permission to use

Using Digital and Internet Content

- The current Copyright Act provides no specific educational digital exceptions and no global licensing arrangements are yet available to educational institutions for digital content
- Internet content is covered by copyright
- Material you have permission to use in one format cannot be converted and used in another without permission

How may I provide web content to my class?

- The single best way to provide web content without copyright issues is by **linking to it**. Posting the actual content to a website without permission constitutes unauthorized distribution of copyrighted content
- By providing a link, students can access it and copy it as individuals under the “research and private study” fair dealing exception
- Password protected content should not be linked to without permission

How can I share a Youtube video with my class?

- Unless there is explicit permission given, assume that it is copyrighted
- Again, **link** to the page that has the video and have students access it themselves
- If your classroom has the capability, play a stream of the video live from the web – exercise caution – much content is posted to Youtube without permission of the content owners

Things to keep in mind

- Deep linking – If it is not clear what the source page is of the content you are linking to, include a link to the mainpage of the site as a way of citing the source
- Use permalinks or persistent links where possible to avoid “lost pages”

What if I want to play a video in class?

- Most educational videos available through the MacEwan Library have classroom public performance rights. They will be have a label indicating if they do not have these rights. Videos without this clearance require permission
- MacEwan has a license for in-class performance of feature films distributed by Criterion and Audio-Cine (at least 80% of all feature films)
- Most public performance licenses do not include rights for streaming over the web

Alternatives

Use licensed content from the MacEwan Library

- MacEwan Library databases have an excellent collection of licensed articles, music, video and images
- A growing collection of e-books and ebrary content
- Depending on the license terms, you may present this material in class and **link** to it so students can review and copy the material within the fair dealing or license limits




Alternatives

Use open-access content

- Numerous websites offer content in the public domain or with limited copyright restrictions
- Check website copyright use declarations – non-profit educational use is often allowed without needing to get permission, but there may be limitations
- **Creative Commons** provides an easy way for copyright owners to share their work and allow users to copy with limits – creativecommons.org

www.MacEwan.ca



Alternatives

Use your own content

- Instructors can use class notes or their unpublished work
- Use MacEwan developed course materials and resources that have been cleared for online use and distribution

www.MacEwan.ca

Distance Delivery Issues

- Distance delivery models are not accommodated by the Copyright Act – educational exceptions do not extend to off-premises use
- Institutional print and classroom performance licenses do not extend to digital distribution through Blackboard
- Digital specific permissions are needed for Blackboard distribution of copyrighted material

Partial solutions

If the content is only available in print form:

Include as much material as possible in a Access licensed readings coursepack. Two options are:

- A department produced package mailed to students – royalties paid by department through Print Services
- MacEwan Coursepacks sold online through the bookstore with texts – royalties included in the coursepack purchase price
- Put material on reserve – the Library will mail material out to students and is lenient with return deadlines
- Request permission to digitize and post on Blackboard

Partial solutions

If the content is digital...

- If it is available online, provide links to the content on your Blackboard site or via e-mail
- If it is in the Library database, provide a link in Blackboard to the page – most of this content will need to be accessed through the *myMacEwan* portal
- Use content associated with adopted textbooks
- Check for Library content alternatives that have clearance for web distribution
- Ask permission to post it on Blackboard

Copyright Reform

- Copyright reform Bill C-61 (“The Canadian DMCA”) introduced in June 2008 generated considerable controversy
- The bill died on the order paper with the fall 2008 election call
- The government just completed a public consultation and a new reform bill is rumoured to be introduced before spring

Copyright Reform

On the positive side, C-61 recognized the need for digital educational exceptions and among its proposals:

- The use of “freely available” internet content without permission
- The extension of classroom use exceptions and license models to digital

Copyright Reform

Digital Locks (DRM, TPMs)

On the negative side, C-61 would have made it illegal to make a copy of any content that has a digital lock – any type of digital content can be locked.

So, even if fair dealing currently gives you the right make a copy, it would be illegal under C-61 to break a digital lock for any purpose.

Under such a reform, the balance between users and owners rights would be extremely compromised in copyright owners favour.

We have to wait and see what the new bill will offer.

Future of Copyright

- The major content owners are struggling to come to terms with the digital reality and create new business models that sustain their businesses – or cling to the old models
- Challengers are providing new ways of accessing content, bypassing the old models
- Creators are embracing new distribution and marketing methods provided by the web

Resources

MacEwan Copyright Information

MacEwan Copyright Guidelines:

University Copyright Guidelines

Access License Guidelines

<http://macewanbookstore.com/copyright/>

Copyright Links:

General information on copyright

Public domain and open-access resources

<http://macewanbookstore.com/copyright/copyright-links.html>

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Resources

MacEwan Library Resources

Find Articles and More:
<http://library.macewan.ca/articles>

Find Music, Video & Images:
<http://library.macewan.ca/dvd>

www.MacEwan.ca

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Resources

Putting Materials on Reserve:
<http://library.macewan.ca/reserve>

Creating Persistent Links to Database Articles:
http://library.macewan.ca/persistent_links

www.MacEwan.ca

Resources

CAUT Fair Dealing Advisory

<http://www.caut.ca/uploads/IP-Advisory3-en.pdf>

Canadian Intellectual Property Office (CIPO)

Guide to Copyrights

<http://www.cipo.ic.gc.ca/eic/site/cipointernet-internetopic.nsf/eng/wr00506.html>

Introducing copyright: A plain language guide to copyright in the 21st century - By Julien Hofman

<http://www.col.org/resources/publications/monographs/Pages/Copyright.aspx>

Resources

Canadian Copyright Collective Societies:

<http://www.cb-cda.gc.ca/societies/index-e.html>

Access Copyright:

<http://www.accesscopyright.ca/>

Resources

Copyright information, advice and assistance
with permissions :

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