

Copying right

A guide for Canada's universities
to copyright, fair dealing and
collective licensing

August, 2002

This guide reflects the provisions of the Copyright Act and associated regulations in force as of September 1, 2001

Prepared for _____ University by the Association of Universities and Colleges of Canada and the Canadian Association of Research Libraries



Association of Universities
and Colleges of Canada



Association des universités
et collèges du Canada

Copyright on campus

Every day across Canada, university professors, staff and students make thousands of photocopies. Books, journal articles, speeches, sections from plays - they're all being copied. The copies help students learn, assist professors in their teaching and research, and facilitate the smooth running of the university.

But is that copy you're making legal? The answer lies in the rules in the *Copyright Act* and in the licence your university has signed with the copyright collective now called Access Copyright, The Canadian Copyright Licensing Agency (formerly CANCOPY).

This brochure will help guide you through the law and licence so that you can be sure you are copying right.

What is Canada's copyright law?

Canada's *Copyright Act*, originally enacted in 1924, is complex, and is subject to periodic revision. But one thing is clear: it is an increasingly important law for Canada's universities. Ignorance of the law will not protect you against charges of copyright infringement, the consequences of which can be serious, with civil or even criminal prosecution possible.

Copyright law protects a variety of creations, including such diverse items as inter-office memos, books, computer programs, databases, sculptures, songs, films, even a drawing scribbled on the back of an envelope. It gives copyright owners - usually authors or publishers - the sole right to copy or to authorize someone else to copy their works. Moreover, copyright law is international. If a work is protected in any one of over 100 countries, it's protected by copyright here.

There are, however, a number of important legal exceptions to this right of creators to control the reproduction of their own works. One important exception is called "fair dealing". Fair dealing balances the rights of copyright owners with the needs of users, such as students and researchers, who require access to copyright material to pursue their studies. For universities, with their mission of creating and passing on knowledge through teaching, research and scholarship, understanding the copyright law and being able to apply the concept of fair dealing is fundamentally important.

What is fair dealing?

The *Copyright Act* provides that dealing with any material protected by copyright for the purposes of private study, research, criticism, review or news reporting is not an infringement of copyright. Fair dealing with a work does not require the permission of the copyright owner or the payment of royalties.

Although well-recognized in Canada and abroad, fair dealing has never been clearly defined in Canadian legislation, and the courts have tried to interpret what it means. As a result, while fair dealing exists, there is a lot of disagreement over what it includes.

In deciding whether copying is fair dealing, the courts have determined that the relevant factors to be considered include the length of the excerpts used, the relative importance and quality of the excerpts used, and whether a copy is made for academic or commercial purposes. Fair dealing usually involves copying only a reasonable portion of a work.

Fair dealing applies to photocopying as well as other methods of reproduction - including the making of slides, microfiche, or transparencies as well as to faxes and other methods of electronic transmission.

What if I need to copy more than fair dealing allows?

In the past, when students, faculty and staff wanted to make copies that didn't fall under fair dealing, they were required to contact individual copyright holders and obtain permission. That process was often onerous and time-consuming. Many individuals didn't even know where to start.

The *Copyright Act* permits the formation of copyright collectives in Canada. Collectives represent groups of copyright owners for the purpose of collecting copyright payments on their behalf and authorizing the use of their works. Collectives also offer "blanket licences" that allow for the use of a broad range of material without seeking individual permission.

For published works, two collectives are now in existence in Canada, offering licences to cover copying of published material, usually books or articles, by photocopying, facsimile, or similar methods of copying. Universities in Quebec operate under a licence with a Quebec-based collective known as COPIBEC (formerly, the Union des écrivaines et écrivains québécois). In the rest of Canada, most universities have signed licences with a collective now known as Access Copyright, The Canadian Copyright Licensing Agency (formerly CANCOPY). Your university has signed a licence with Access Copyright. The licence your university has with Access Copyright does not permit digital reproduction by or for students or professors.

What is the Access Copyright licence?

The licence your university has signed with Access Copyright allows professors, students, and staff at your institution to make copies other than those allowed under fair dealing. For example, professors can make multiple copies of a periodical article, enough for every student in the class. Librarians can make multiple copies of a work to put on reserve. Copies can be made for administrative purposes. And multiple copies can be produced by the university bookstore for inclusion in student course packs.

There are still limits to the proportion of a work that can be copied. For example, the licence generally limits copying to either 10 percent of a work for personal use (or 15 percent if the copies are to be sold), or the whole of a chapter which is 20 percent or less of a book, a short story, poem, or journal article from a book or periodical issue containing other works, or a newspaper article, whichever is greater.

The licence makes it a lot easier for students, professors and administrators to get on with their work and not have to worry whether or not a copy is legal, every time they press that start button on the photocopier. In fact, armed with the licence and the fair dealing provision in the copyright law, you should be able to copy most of the material you need in the course of your day-to-day activities.

How does the licence work?

Your university, on behalf of students, faculty and staff, pays an annual fee to Access Copyright to cover a variety of copying, including the copying at self-serve copiers in libraries and at other locations, and copies made at photocopiers in various departments. No record-keeping is required, as long as the copies are not sold.

The university has also agreed that, when photocopied material is sold, for example, when the bookstore or university print shop produces course packs and sells them to students, records will be kept and Access Copyright will be paid a pre-set amount (5.4 cents as of September 2002) for each page copied in order to cover royalty payments to the copyright owner. This amount will likely be included in the price of the course pack when it is sold to students.

The Access Copyright licence doesn't cover all works. Certain whole categories of works, for example, unpublished works and sheet music, are not covered by the licence. In addition, some authors and publishers have specifically excluded some or all of their works from coverage under the licence. There is a list called an "exclusions list", attached to the licence and available through your library, which sets out these excluded items. So if the copying you want to do does not fit into the fair dealing guidelines, (for example, you want to make 30 copies for distribution in today's biology class), you need to do a quick check of this list to be sure the licence covers the work involved. In most cases, it will. But if not, you need to get permission from the copyright owner directly or through Access Copyright.

Be familiar with the licence before you copy. Your university has posted signs to help you understand it.

What is covered?

Taken together, the law and the University's licence allow the following:

- \$ fair dealing with respect to any work for the purposes of research, private study, criticism, or review;
- \$ copying works in the public domain (copyright protection normally ends fifty years after the death of the author of a work);
- \$ copying the text of federal and Ontario laws, statutes and judicial decisions;

- \$ copying no more than 10 percent of a work for personal use (or 15 percent if the copies are to be sold), **or** the following, whichever is greater:
an entire newspaper article, short story, play, poem, essay or article from a book or periodical issue; an entire entry from an encyclopaedia, dictionary, annotated bibliography, or similar work; an entire chapter which is less than 20 percent of a book.

What is not covered?

Some copying activities in universities are **not** covered by the concept of fair dealing **or** the licence. These include:

- \$ copying an entire book;
- \$ repeated, systematic and cumulative copying from the same published work - copying that would eventually result in a substantial part of that work being copied;
- \$ copying published sheet music or workbooks;
- \$ copying of unpublished works, such as private letters, diaries, or class notes.

Copyright cues

Here are some more tips that can help guide you further through the often perplexing world of copyright:

- \$ Check your dates. Generally, copyright protection lasts for 50 years following the death of the creator. After that, works are in the public domain and can be copied freely.
- \$ Don't copy letters to the editor or newspaper advertisements without permission. And remember, the individual who wrote the letter or prepared the ad owns the copyright, not the newspaper.
- \$ Don't change a work in any way while copying -- for example, by editing or changing the phrasing. Creators retain the moral rights to the integrity of their own work, and that means you can't make changes to suit your needs.
- \$ With regard to government publications, anyone can copy federal laws and judicial decisions without charge, and without asking permission, provided the copy is accurate and it is not represented as an official version. This also applies to statutes, regulations and judicial decisions of the Province of Ontario. At this time, copying other provincial or territorial laws or judicial decisions requires the permission of the appropriate government.

Copyright and the Internet

Much of the material on the Internet is protected by copyright. This includes postings to news groups, e-mail messages, images, photographs, music, video clips and computer software. The general rule is that you must get permission from the owner (usually the person or organization that created the material) to use text, graphics, images, sound and video that have been created by others. There are some things that are not usually protected by copyright, for example, facts, information, titles, ideas, plots, and short word combinations; neither are works in the public

domain. The licence that the University has with Access Copyright does not cover works in electronic form.

The use of copyright materials from the Internet is an area of law that is currently under study in Canada and around the world, and possible changes to the law are under active consideration. The universities and research libraries of Canada are active participants in these discussions.

Licensed e-journals and databases

Your University Library has purchased licence agreements with several publishers of electronic journals and other information that may permit limited downloading and printing from these licensed resources. Each resource is governed by the terms of a specific licence. Staff in the Reference Department of your library will be able to provide details.

Copyright Flow Chart

Is it a print work? **6 NO** - consult licences which cover the copying of film or other media, or in the case of unlicensed electronic information, obtain permission from the copyright owner

9

YES

9

Is it a published work? **6 NO** - obtain permission to copy from the copyright owner

9

YES

9

Is the work now in the public domain? **6 YES** - copy it

9

NO

9

Is your copying fair dealing? **6 YES** - copy it

9

NO

9

Is your copying covered by the Access Copyright licence? **6 YES** – copy it

9

NO

9

Seek permission to copy from the copyright owner (or ask Access Copyright for assistance).