

Copyright and other considerations

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Copyright

The right to decide how the work can be used.

Facts about copyright

In Canada it is legislated by the Copyright Act

Protects the fixed, expression of ideas, but not facts

Generally, lasts for 70 years after the death of the creator

The creator and the copyright owner are not necessarily the same

Copyright can be sold, transferred, waived and inherited

Can be divided e.g. Print rights, Digital rights, Movie rights, Licensing

Includes moral rights which protect the reputation of the creator



Michael Snow saw red when the Eaton Centre tied ribbons around the necks of his geese.
Jack Cusano / Toronto Star file photo

Works covered by copyright include:

Books, essays, articles, magazines, journals, diaries, scripts

Photographs, paintings, drawings, sketches, plans

Graphs, tables, illustrations, maps

Films, broadcasts, podcasts

Sculptures, bridges, buildings, models

Performances, sheet music, lyrics, songs, choreography

Who owns copyright?

General rule: 1st owner of copyright is the creator (or creators)

At Carleton, faculty and students keep their copyright (almost always!)

If you want to use students' works, you need their permission.

Joint authors are co-owners of copyright and need to agree

Individuals, companies and governments can all own copyright

Technological Protection Measures

The [Copyright Act statute 41.1](#) prohibits breaking a TPM even if the use is allowed under the copyright act.

TPM is any technology device or component that controls access to a work or restricts things like copying, downloading, editing, sharing etc.

It prohibits circumventing TPM, offering services that circumvent a TPM, or providing technology / software that circumvents a TPM.

Most DVD's incorporate TPM.

Some limited exceptions for people with perceptual disabilities and security research.

Prohibits removal of rights management information

What to do

Primarily about copyright & teaching

Works not needing permission

Insubstantial amount (not defined in the Copyright Act)

Linking is not copying

Public Domain (Copyright generally ends **70** years after death of creator)

Works where you own the copyright (Co-authored works need agreement)

Works where the copyright owner gives permission for use

Government-produced materials – depends on country and level of government

Canadian federal government material for non-commercial use, no adaptation, attribution

US government materials

When permission is embedded in the contract

Licensed works – accessible through Carleton Library (e-journals, ebooks, image databases, streaming videos)

Open Access - scholarly works free of restrictions on access

Creative Commons – free, simple, standardized set of licenses that can be applied by a creator to their works. Allows users to know what they can do with the work and how to attribute it.

Fair Dealing (Copyright Act section 29)

Carleton Fair Dealing Policy <https://carleton.ca/secretariat/wp-content/uploads/Fair-Dealing-Policy.pdf> -

Allows copying of copyrighted material if use is “Fair”

Fairness is decided by viewing it against 6 tests. (CCH. v. Law Society of Upper Canada)

The use MUST pass the 1st test (purpose)

Allowed Purposes for Fair Dealing

Research

Private
study

Criticism

Review

News
Reporting

Education

Parody

Satire

Fair Dealing - 6 tests

4 are about the copying:

1. **Purpose** of the reproduction (detailed)
2. **Character** of the reproduction
 - How many copies are being made?
 - What is the existing custom and practice?
3. **Amount** of the reproduction
 - How much of a complete work will be copied?
4. **Alternatives** to the reproduction
 - Is the copy necessary to achieve the purpose?
 - Any non-protected alternatives available?

Fair Dealing - 6 tests

2 are about the work:

5. Nature of the work

Has the work been published?

Does it contain confidential or privileged content?

6. Effect of the reproduction on the work

Will the copying have an economic consequence to the rightsholder?

Other impacts (reputation, scholarship etc.)

A short excerpt includes

Up to 10% of a copyright-protected work, or,

One chapter from a book

A single article from a periodical issue

An entire newspaper article or page

An entry from an encyclopedia, annotated bibliography, dictionary or similar reference work

An entire single poem or musical score from a publication containing other poems or musical scores

An entire individual artistic work from a work containing other artistic works such as a:

Painting

Print

Photograph

Diagram

Map

Chart

Plan

Other Exceptions

Some more useful than others!

When making videos/films: Incidental Inclusion in videos

It is not an infringement of copyright to incidentally and not deliberately

- include a work or other subject-matter in another work or other subject-matter; or

- do any act in relation to a work or other subject-matter that is incidentally and not deliberately included in another work or other subject-matter.

A film can include all or part of another work. Logos, trademarks, billboards, or music that appear in a street scene do not need to be blurred out if the inclusion is not deliberate.

**Incidental
Inclusion – 30.7**

When making videos/films:

It is not an infringement of copyright for any person to reproduce, in a ... cinematographic work

an architectural work

a sculpture or work of artistic craftsmanship that is permanently situated in a public place or building;

This means films can include buildings, artworks, or sculptures that are permanently situated in a public place, but

museums, shopping centres, galleries may be open to the public but are not a public space.

you are subject to the copyright law of the country that you are in. This is the law in Canada.

Miscellaneous

- 32.2 (1) b

Requirements:

- At an educational institution
- To students (primarily) for educational purposes
- Cannot break digital lock (includes passwords)
- Must be a non-infringing copy

You can show:

- your own or borrowed original copy
- streaming videos from institutional accounts
 - Video - Kanopy, NFB, Alexander Street Press Video
 - Music - Naxos, Classical Music Library
 - Audiobooks – RBDigital

Caution:

Terms of use of personal streaming accounts such as Netflix or Crave typically do not allow this, unless it is clearly stated by the uploader that educational use is allowed.

Performances & Cinematographic Works — 29.5, teaching

Public Performance licenses
no longer required to show a
film or video in class

Requirements:

Audience is primarily students from one institution

Must be for educational or training purposes

Does not apply if there is a clearly visible notice on the work or on the site prohibiting the copying

Cannot break digital lock (includes passwords)

Must not use infringing copies

Must cite the source

Caution:

Does not apply if you know or should have known that the work was made available through the internet without the consent of the copyright owner

Publicly Available Internet Materials—

30.04, teaching

Allows copying and use of material found on the internet under certain circumstances.

Think of this when you create online exhibitions or digitize materials. Make it easy for others: give explicit permission for the uses you offer.

Requirements:

Cannot break digital lock (includes passwords)

Must not use infringing copies

Educational institution must take measures to prevent copying and distribution

Copy must be destroyed 30 days of the course ending

Students shall destroy any copies they have made within 30 days after they have received their final evaluations.

Online Lessons

30.01, teaching

Allows copying and use of materials for online courses and distance education

Requirements:

Solely for non-commercial purposes

Must cite the source

Cannot break digital lock (includes passwords)

Must not use infringing copies

New work must not have adverse effect on market for original work

New work must not be a substitute for the existing work.

Creation of Non-Commercial User Generated Content—29.21

Also known as the “Mash-up” or “YouTube” exception.

Allows the use of an existing work to create and disseminate a new work.

Caution:

Does not include cinematographic works

Does not include commercially available works in a format designed to meet the needs of a person with a perceptual disability (ie Large-print books)

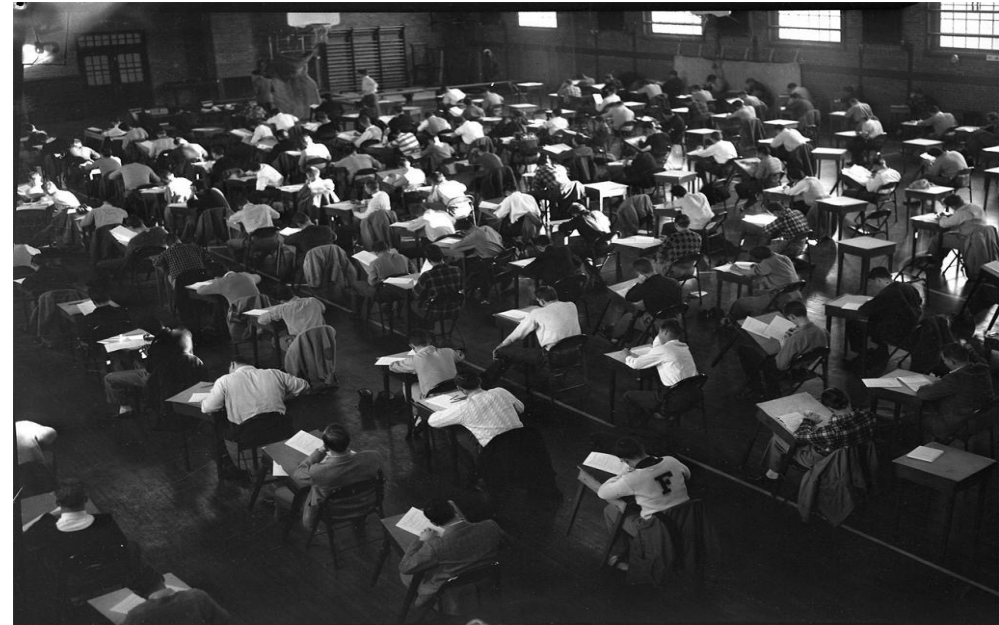
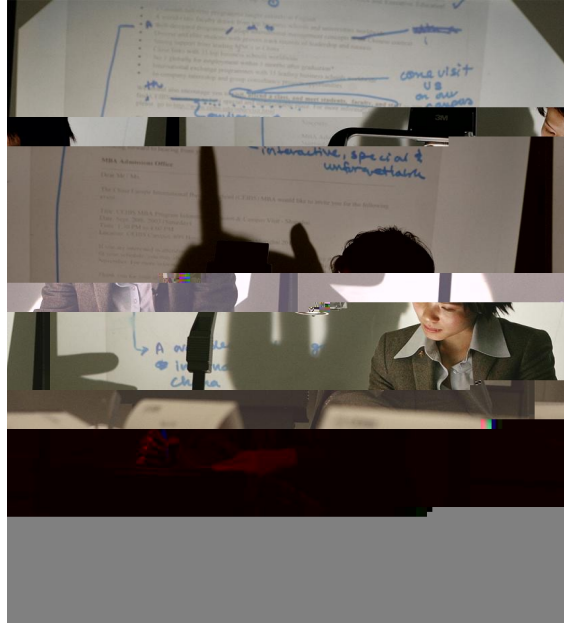
Must not use infringing copies

Copying for persons with Perceptual Disabilities - 32

Allows copying, adapting, translating and performing of works, by or for a person with a perceptual disability

And don't forget – section 29.4

Display for instruction Reproduction for Examination



Must be at Carleton, work must not be available commercially

Using AI to create materials

Potential to be very useful tools

At the moment there are no Carleton licenses.

If you use these – be aware of the terms and conditions you are agreeing to

Using AI to create materials

- Programs are still new, law around AI generated content is emerging
- No widely accepted standards of practice exist
- AI programs are trained using databases of copyrighted materials.
 - The copyright owners / creators are not informed that their works are being used
 - There is no attribution to the creator
 - There is no payment

Complaints and lawsuits are happening against AI companies

- Infringing on authors' copyrights
 - Creating works in their style
 - Illegally acquiring large datasets containing copyrighted material (ie Z-Library, Bibliotek etc)
 - Using private and confidential information from dating websites, spotify playlists etc.
-

Who owns the copyright? – in brief

Chat GPT, DALL-E: you own the IP to the prompt you use to create (Input) and the work (text or image) that is created (Output).

Midjourney is more complicated: <https://docs.midjourney.com/docs/terms-of-service>

- If you are a paying subscriber – you own the IP to the image you create (mostly)
- If you are NOT a subscriber – you are granted a CC BY NC 4.0 license (Midjourney keeps the IP)
- In any case – Midjourney is designed to be an Open community which promotes using and remixing. There are some ways around this, but it's iffy.

■ **Llama** - ! <https://llama.meta.com/license/>

- **2. Additional Commercial Terms.** If, on the Llama 2 version release date, the monthly active users of the products or services made available by or for Licensee, or Licensee's affiliates, is greater than 700 million monthly active users in the preceding calendar month, you must request a license from Meta, which Meta may grant to you in its sole discretion, and you are not authorized to exercise any of the rights under this Agreement unless or until Meta otherwise expressly grants you such rights.

Any questions?

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