



Copyright Roadmap

It can be easy to get overwhelmed by the complexity of copyright regulation, but here are some basic steps to consider as you analyze copyright issues:

1. Is the material protected by copyright?

Consider whether copyright applies at all. It is likely that much of the content you will use in your research and teaching will fall within Canadian copyright protection.

The *Copyright Act* provides that copyright subsists in every original literary, dramatic, musical and artistic work. Generally, in the case of published works, the term of copyright is the life of the author plus 50 years from the end of the year of his or her death. There are some exceptions to this term, such as the works of anonymous and pseudonymous authors, or works of Crown copyright. After the term of copyright expires, the material is said to be in the public domain.

Copyright also subsists in certain “non-traditional” subject matter, such as performers’ performances, sound recordings, and broadcast signals. In these cases, the clock may start running from the first performance or fixation of a performer’s performance, the first fixation or publication of a sound recording, or the first broadcast of a communication signal. Refer to the *Copyright Act* for further details on the term of copyright.

References:

- Copyright in Works (*Copyright Act*, s. 3(1) and s. 5)
- Copyright in Performers’ Performances, Sound Recordings, and Communication Signals (*Copyright Act*, s. 15 (performers’ performances), s. 18 (sound recordings), and s. 21 (communication signals))
- Term of Copyright (*Copyright Act* ss. 6-12 for works and s. 23 for other subject matter)

No	The work is no longer protected by copyright. You may use the material without seeking permission.
Yes	The work is still protected by copyright. Proceed to step 2.

2. Does permission exist in the form of a licence?

Determine if the material in question is covered by a licence. If (i) the material is licensed, and (ii) the use that you propose to make of it is permitted by the licence (two separate questions) , then you will be able to use the material without further permission or payment of fees or royalties.

Here are some examples of licences you may come across in your teaching and research:

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Yes	The use is permitted by the licence . You may use the material in accordance with the licence.
No	The use is not permitted by the licence . Proceed to step 3.

3. Is the proposed use “substantial”?

Copyright applies to the reproduction, performance, or publication of a work “or a substantial part thereof”. The use of less than a substantial part does not require permission or further payment. This is complicated because what is deemed “substantial” is not defined in the *Copyright Act*; rather, it is a matter of degree and context.

A small amount taken from a much larger work will often not be viewed as substantial depending on the nature of the work and the proportion of what is used to the underlying work as a whole. However, the analysis is not purely quantitative: even a relatively short passage may be viewed as substantial in some circumstances, especially if it is of particular importance to the original work

For more guidance on how to ascertain if the proposed reproduction or other use is substantial, please refer to the [University of Toronto Fair Dealing Guidelines](#).

References:

- [Copyright in Works](#) (*Copyright Act*, s. 3(1))

No	The portion that you plan to use is not substantial. You may use it without seeking permission.
Yes	The portion that you plan to use is substantial. Proceed to step 4.

4. Is the use permitted by “fair dealing” or any of the other exceptions in the *Copyright Act*?

The *Copyright Act* provides for certain exceptions to copyright infringement that can be relied on in order to use works without first obtaining consent from the copyright owner.

Fair Dealing

According to the Supreme Court of Canada, the fair dealing exception is “always available” to users, provided that its legal requirements are met. When these legal requirements are met, there is no need to look further at the more specific exceptions that follow in the legislation.

To qualify for fair dealing, two tests must be passed:

First, the “dealing” must be for an allowable purpose: research, private study, education, parody, satire, criticism or news reporting. Use of a copyright-protected work for teaching or research will typically pass the first test.

Second, the “dealing” must also be “fair,” having regard to the following factors:

1. the purpose of the dealing;
2. the character of the dealing;
3. the amount of the dealing;
4. the nature of the work;
5. available alternatives to the dealing;
6. the effect of the dealing on the work.

The second test requires a fact-specific and nuanced assessment. The relevance of each factor will depend on the context, with some potentially more important than others – and possibly some not relevant at all – in particular cases. Please refer to the [University of Toronto Fair Dealing Guidelines](#) for further guidance.

Reference:

- Fair Dealing (*Copyright Act*, ss. 29-29.2)

Specific Educational Exceptions

In addition to fair dealing, the *Copyright Act* also contains several exceptions that apply specifically to not-for-profit educational institutions such as the University. Even though the fair dealing exception is “always available,” and recourse to a specific exception will not be necessary where fair dealing applies, faculty and staff may wish to consider whether one of the specific educational exceptions applies.

Please refer to the University of Toronto’s [Copyright FAQ](#) for further guidance on applying these exceptions.

Reference:

- Educational Institutions (*Copyright Act*, ss. 29.4-30.04)

Yes	The use is consistent with conditions and limitations in the “fair dealing” or other educational exception. You may copy the material without seeking permission.
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