

INTRODUCTION

Copyright law in Canada provides certain exclusive rights to the owners of copyright in original literary, dramatic, musical, and artistic works, as well as in sound recordings, performers' performances, and broadcast signals. It also includes several "user's rights", which make it permissible to do certain things that would otherwise infringe copyright if done without a licence.

Navigating this sometimes-complex web of exclusive rights and exceptions can be difficult even for an educated and savvy user. However, understanding both the opportunities and the limitations of copyright law is critical in the educational setting.

This document provides a general overview of copyright law in Canada as it applies to students, faculty, and staff of the University of Toronto. It also provides answers to frequently asked questions in order to give some context to the exceptions that may be available, including the "fair dealing" exception and exceptions that are specific to educational institutions, as well as certain licensing arrangements that permit practices that would otherwise constitute copyright infringement.

In 2012, the *Copyright Modernization Act* introduced amendments to the *Copyright Act* to expand the scope of permissible educational uses. A series of decisions of the Supreme Court of Canada also point to a broad and generous interpretation of user's rights, including fair dealing.

However, exceptions to copyright infringement are not unlimited. It is still necessary to take care when using any literary, dramatic, musical, or artistic work, or any sound recording, performer's performance, or broadcast signal, even in an educational setting.

The University of Toronto takes its copyright obligations seriously, recognizing the legal rights and interests both of copyright owners and of those who use copyright-protected works in their teaching, education, and scholarship. This document is intended to help students, faculty, and staff ensure that their professional activities comply with Canadian copyright law.

COPYRIGHT OVERVIEW FOCUSING ON THE UNIVERSITY CONTEXT

I. COPYRIGHT AND THE EXCLUSIVE RIGHTS OF COPYRIGHT OWNERS

A. COPYRIGHT BASICS

Copyright law is generally understood in Canada as reflecting a balance between promoting the public interest in the encouragement and dissemination of works of the arts and intellect, on one hand, and obtaining a just reward for the creators of those works (and preventing anyone other than the creators from appropriating whatever benefits may be generated) when the works are used, on the other.

Under the *Copyright Act*, copyright subsists in every original literary, dramatic, musical, and artistic work. Copyright subsists not in the ideas conveyed by those works, but in the original expression of those ideas in a material form. In most cases, copyright in these works subsists for the life of the author plus 70 years from the end of the year of his or her death.

Copyright also subsists separately in certain “non-traditional” subject matter: performers’ performances, sound recordings, and broadcast signals. In the case of a broadcast signal, copyright will subsist until 70 years from the end of the year in which the signal is the first broadcast. The term of copyright in sound recordings and performers’ performances depends on whether and when the recording or performance is published (meaning that copies are made available to the public):

- Copyright in an unpublished sound recording subsists for 70 years after the end of the year in which the recording is made. However, if the recording is published during that 70-year period, the term is extended until 75 years after the end of the year in which the sound recording was published or 100 years from the end of the year in which it was made, whichever is earlier.
- Similarly, the basic term of protection for a performer’s performance runs for 50 years from the end of the year in which the performance occurs. However, if the performance is fixed in a sound recording before that 50-year period expires, the term is extended until 70 years after the end of the year in which the first fixation occurred. If the sound recording is published during that extended 70-year period, the term is extended again until the 75 years from the end of the year in which the sound recording was published or 100 years from the end of the year in which the performance was first fixed, whichever is earlier.

The *Copyright Act* provides the owner of copyright in these works and other subject matter with certain exclusive rights during the term of copyright. For “traditional” works – i.e., literary, dramatic, musical, and artistic works – those rights are set out in section 3 of the *Copyright Act* and include, among other things, the right to do the following:

- produce or reproduce the work (or any substantial part of it);
- perform the work (or any substantial part of it) in public;
- publish a previously unpublished work (or any substantial part of it);
- produce, reproduce, perform, or publish any translation of the work;
- convert a novel, artistic work or other non-dramatic work into a dramatic work;
- make a sound recording or film of the work;
- reproduce, adapt, and publicly present the work as a cinematographic work (i.e., in audiovisual format);
- communicate the work to the public by telecommunication (i.e., by television broadcast or over the Internet), including by making it available in a way that allows individual members of the public to access it on demand;
- rent out sound recordings of musical works and most computer programs; and
- where the work is in the form of a tangible object, sell the object for the first time.

The copyright owner also has the exclusive right to authorize others to do any of those things.

The exclusive rights in “non-traditional” subject matter – i.e., sound recordings, performers’ performances, and broadcast signals – are slightly different. Among other things, the owner of copyright in a performer’s performance has the exclusive right to fix (i.e., record) the performance in any material form, perform it in public, and communicate it to the public by telecommunication, as well as to reproduce any fixation made without the performer’s authorization. In the case of a sound recording, the copyright owner has the exclusive right to publish the recording for the first time,

reproduce it in any material form, rent it out, make it available by telecommunication on demand, and sell any tangible copy of it for the first time. The owner of copyright in a broadcast signal has various exclusive rights related to the fixation, reproduction, public performance, and retransmission of the signal. The nuances are set out in sections 15, 18, and 21 of the *Copyright Act*.

The Copyright Act provides that the first owner of copyright is generally the author of a work, the “maker” of a sound recording, the performer of a performance, and the broadcaster of a broadcast signal. However, the first owner is not always the *current* owner. Very often, the original owner will transfer its rights to a publisher, record label, distributor, or other commercial entity, which will then be in a position to issue licences to end users. As a result, even if the author, maker, performer, or broadcaster has no objection to a particular use, it is often necessary to seek permission from someone else.

B. COPYRIGHT INFRINGEMENT

1. Infringement Generally

It is an infringement of copyright to do, without permission from the copyright owner, any act that only the owner is entitled to do. Copyright infringement can result in penalties, including monetary damages, injunctions, and even fines or imprisonment in the most extreme cases.

In many cases, permission comes in the form of a licence, either directly from the copyright owner, via a publisher or other commercial entity representing the copyright owner, via a public licence such as a Creative Commons licence, or from a collective society or licensing agency that represents multiple copyright owners. In most cases, permission will require the payment of a fee or royalties negotiated by the parties. In some cases, a collective society may have a tariff of royalties set by the Copyright Board of Canada, in which case a user may obtain a licence under that tariff to use works or other subject matter in the collective’s repertoire.

2. Using a Substantial Part of a Work

Where only a portion of a particular work is used, the consent of the copyright owner is required only if the portion constitutes a “substantial part” of the work.

What constitutes a “substantial part” is a matter of degree and context that is determined on a case-by-case basis. There is no “bright-line” test. A small amount copied from a much larger work will often not be viewed as substantial, so long as the amount taken does not represent a substantial portion of the author’s skill and judgment expressed in the work. However, the analysis is not purely quantitative: in fact, the concept is rooted more in quality than in quantity. 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 example, even a few seconds of a movie or television show is likely to be “substantial”, and therefore to require consent from the copyright owner before being copied for classroom use, unless an exception to copyright infringement applies.

3. Secondary Copyright Infringement

It is also an infringement of copyright for a person to sell, rent out, offer for sale or rental, or distribute copies of works or other subject matter, or to possess or import those copies for the purpose of doing any of those acts, if the person knows or should have known that the copies infringe copyright or, if the

copies are imported, would have infringed copyright if made in Canada by the person who made them elsewhere. These provisions are sometimes known as the “parallel importation” or “gray market” provisions of the *Copyright Act*.

C. WHEN DOES CANADIAN COPYRIGHT LAW APPLY?

It is safe to assume that most of the ways you will use various materials in connection with your teaching and research will be governed by Canadian copyright law, which applies whenever the use of a protected work occurs in Canada. For example, whenever a protected literary work is photocopied or scanned on the University’s premises, the provisions of the Canadian *Copyright Act* will apply. Similarly, Canadian copyright law will apply if a photograph, sound recording, or video is uploaded to your course website or learning management system (LMS) in Canada.

Although many of the concepts are similar, US copyright law is sufficiently different from Canadian law that you should not rely on US copyright guidance to assist in assessing your Canadian rights and obligations.

II. EXCEPTIONS TO COPYRIGHT INFRINGEMENT

Notwithstanding the exclusive rights discussed above, the *Copyright Act* provides for certain exceptions to copyright infringement that can sometimes be relied on in order to use works and other subject matter without first obtaining consent from the copyright owner.

A. FAIR DEALING

Under sections 29, 29.1, and 29.2 of the *Copyright Act*, there are a number of circumstances in which “fair dealing” with works is not considered an infringement of copyright. “Fair dealing” is not defined in the *Copyright Act*; the concept has evolved through case law and is complex and fact-specific.

In general, for a use to qualify as fair dealing, the user must prove both that (i) the dealing was for one of the allowable purposes set out in the *Copyright Act* (research, private study, education, parody, satire, criticism, review, or news reporting), and (ii) the dealing was “fair.” The Supreme Court of Canada has identified six factors that are relevant in determining whether or not a particular dealing is fair. The six factors are:

- (i) The purpose of the dealing
- (ii) The character of the dealing
- (iii) The amount of the dealing
- (iv) Available alternatives to the dealing
- (v) The nature of the work
- (vi) The effect of the dealing on the work

When a short excerpt from a copyright-protected work or other subject matter is used for the purpose of news reporting, criticism, or review, the *Copyright Act* also requires that the user mention the source and, if given in the source, the name of the author, performer, maker, or broadcaster.

To assist faculty and staff in considering whether the fair dealing exception is likely to apply to the copying or other uses of material, the University has adopted a set of [Fair Dealing Guidelines](#). Before you rely on fair dealing to copy or use any material, please review the Fair Dealing Guidelines found at

uoft.me/copyrighthelp. If it is still unclear to you whether a particular use is likely to constitute fair dealing, please contact the library at copyright@library.utoronto.ca for assistance.

B. 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 is not necessary where fair dealing applies, faculty and staff may wish to consider whether one of the specific educational exceptions – which are somewhat clearer, and therefore more predictable in their application, than fair dealing – applies before attempting the more complicated fair dealing analysis.

In order to qualify for most of the educational exceptions in the *Copyright Act*, the following conditions must generally be met:

- the activity must be for purposes of education or training; and
- except for the activities described under sections 6 and 7 below, the activity must take place on the premises of the University (including any place where education or training is provided, controlled, or supervised by the University).

Students who are enrolled in a course and receive a lesson, test, or examination remotely, via the Internet or some other method of telecommunication, are deemed to be “on the premises of” the University for the purposes of these exceptions.

Briefly, the educational exceptions set out in the *Copyright Act* consist of the following:

1. Reproducing a Work for Instruction

Section 29.4(1) allows the University (or person acting under its authority), without motive of gain, to reproduce a work, or do any other necessary act in order to display it, for the purposes of education or training on its premises.

Previously, this exception was limited to making manual reproductions on blackboards, flip charts, and other similar surfaces, as well as making copies for projection on overhead projectors or similar devices. However, following amendments to the *Copyright Act* in 2012, the exception is now broader. Although “display” is not defined in the *Copyright Act*, it is likely to include, for example, the display of works on computer monitors, tablet computers, smartphones, and other media.

Note, however, that the exception in respect of non-manual reproductions is permitted only if the work or other subject-matter copied is not “commercially available” in a medium appropriate for that purpose. If it is commercially available – meaning that it is available on the Canadian market within a reasonable time and for a reasonable price and can be located with reasonable effort – a licence must be obtained, either directly from the copyright owner, through a public licence such as a Creative Commons licence, or through other means such as via a collective society, in order to reproduce the work. What is “reasonable” in the circumstances will be a question of fact to be answered on a case-by-case basis.

In practice, most works used in a classroom PowerPoint presentation will not be “commercially available” if the versions available for purchase are not well-suited to the medium and a licence is not

readily available from the copyright owner to adapt the work to a more suitable format. Therefore, the exception will generally be available in this context. On the other hand, if a photograph or clip art used in a PowerPoint presentation is available for download at a relatively low fee from a commercial website, it is probably safe to assume that the work is “commercially available” and that the exception therefore does not apply.

The “display” exception does not, however, extend to creating printed versions of a set of PowerPoint slides for distribution to students or to posting them on a course website. If a licence has not been obtained for those specific uses, or if those uses have not been determined in the circumstances to constitute “fair dealing” (probably for the allowable purpose of education or private study), it is recommended that any copyright-protected works (for example, any graphics or photographs obtained via the Internet, any sound or video clips, etc.) be removed before the slides are printed or posted.

2. Reproducing, Performing or Communicating a Work for Tests and Exams

Section 29.4(2) allows the University (or a person acting under its authority) to reproduce, translate, perform in public or communicate to the public by telecommunication, without motive of gain, a work as required for a test or exam. Any performance of the work in public must take place on the premises of the University, and any communication of the work by telecommunication must be to the public situated on the University premises. Further, if the work is “commercially available” in a medium suitable for the purpose, and its use is not covered by fair dealing or another exception, a licence must be obtained before using it for a test or exam.

3. Performances by or for Students

Section 29.5 states that the following acts, if done on the premises of the University for educational or training purposes and not for profit, do not infringe copyright:

- a live performance in public (which includes a University classroom), primarily by University students, of a work;
- a performance in public by the University (or a person acting under its authority) of a sound recording that is not an infringing copy (and any works and performers’ performances embodied in the sound recording);
- a performance in public by the University (or a person acting under its authority) of lawfully-received TV, radio or Internet content, at the same time as it is broadcast or streamed; and
- a performance in public by the University (or a person acting under its authority) of a cinematographic work, provided that it is not an infringing copy.

In each case, the audience must consist primarily of students or instructors of the University or those directly responsible for setting curriculum for the University.

In practice, this exception may serve to expand the scope of certain other educational exceptions. Take, for example, a law professor who wishes to play a courtroom scene from *My Cousin Vinny* for analysis by students as part of an in-class exam. Since it is clear that the film is “commercially available” in a medium suitable for that purpose (i.e., a DVD that can easily be purchased or rented), the “tests and exams” exception discussed above may not apply. However, since section 29.5 does not require that the work or subject matter is not “commercially available,” the law professor should be able to rely on this exception to play the scene for this purpose.

4. Reproduction of Broadcast or Streamed News Programs

Under section 29.6, the University, or a person acting under its authority, may make a single copy of a news or news commentary program (excluding a documentary) at the time of its broadcast, for the purposes of performing the copy for University students at a later time for educational or training purposes. The same section also allows the University, or a person acting under its authority, to perform the copy in public, in front of an audience consisting primarily of University students on the premises of the University for educational or training purposes.

However, in order to qualify for this exception, the broadcast or stream must have been lawfully received. Content acquired through unauthorized streaming sites or illegally decoded satellite signals, for example, will not qualify for the exception and may attract liability.

5. Reproduction of Other Broadcast or Streamed Programs

Under section 29.7, the University, or a person acting under its authority, may make a copy of any other program, including a documentary, at the time it is “communicated to the public by telecommunication” and may keep it for up to 30 days while the University decides whether to perform it for educational or training purposes.

The Supreme Court has held that “communication to the public by telecommunication” includes not only traditional broadcasting but also Internet streaming, which means that this exception should apply to programs streamed online as well, to the extent that it is technologically possible to reproduce a program communicated in this way. However, as with the exception for news programs, the broadcast or stream must have been lawfully received in order to qualify for this exception.

After the expiration of the 30-day evaluation period, the University must either destroy the copy or pay any royalties and comply with any terms and conditions applicable to the making of the copy and its performance in public (which must be limited to educational or training purposes and an audience consisting of primarily University students). At one time, those terms and conditions were generally fixed by the Copyright Board under tariffs proposed by a collective society. Today, however, no such collective society exists, which means that any instructor who wishes to make and perform a copy of a work in this manner will need to make licensing arrangements directly with the copyright owner. For assistance with these licensing arrangements, please contact the Scholarly Communications and Copyright Office, at copyright@library.utoronto.ca, for assistance.

Instructors must keep careful records detailing their use of any broadcast programs as described above and submit those records to the Scholarly Communications and Copyright Office. The records must include the University’s contact information and details of the program, including the program’s title and other identifying information, the duration of the segment copied, the date and time of the program’s broadcast and the name and network of the broadcaster.

6. Distance Education

Section 30.01 was introduced into the *Copyright Act* in 2012 in order to facilitate distance education. Under this new exception, the University, or a person acting under its authority, may

- communicate a lesson, test, or exam by telecommunication – including via the Internet – to students enrolled in the course (or to others acting under the authority of the University);
- make a fixation – i.e., a permanent copy – of the lesson, test or exam in order to facilitate its transmission; and
- do any other act necessary for the purpose of the above acts.

The general purpose of this exception is to permit the University to rely on other exceptions, which are normally restricted to acts that take place on the premises of an educational institution, when delivering content to students remotely. To achieve this purpose, it deems a student who is enrolled in a course of which the lesson, test, or exam forms part to be “a person on the premises of the educational institution” when participating in or receiving the material by means of telecommunication.

A student who has received a lesson, test or exam under this exception may make a copy in order to be able to listen to or view it at a more convenient time, provided that the student destroys the copy within 30 days after the students enrolled in that class have received their final evaluations.

Note that the University and any person acting under its authority, except a student, must

- destroy any fixation of the lesson, test, or exam within 30 days after the students in the course have received their final evaluations;
- take measures that can reasonably be expected to limit the communication of the lesson, test, or exam by telecommunication to students enrolled in the course and to other persons acting under the University’s authority; and
- take measures that can reasonably be expected to prevent students from fixing, reproducing, or communicating the lesson, test, or exam other than as permitted under section 30.01.

In practice, the latter two requirements probably mean that technological protections need to be used when transmitting lessons, tests, or exams to students. At minimum, it must be made clear to the recipients of the material that they are not to share it other than with their classmates or others who are expressly authorized by the University.

7. Work Available Through the Internet

Under section 30.04, the University or a person acting under its authority may, for educational or training purposes, do any of the following things in respect of a work or other subject-matter that is “available through the Internet”:

- reproduce it;
- transmit it electronically to University students or other persons acting under the University’s authority;
- perform it in public for an audience consisting primarily of University students or other persons acting under the University’s authority; and
- do any other act necessary for the purpose of the above acts.

Although section 30.04 has yet to be interpreted or applied by a Canadian court, it is potentially a very broad exception that will streamline the educational use of a wealth of material available through the Internet. However, care must be taken not to exceed the scope of the exception. First, although it is true that a book or DVD ordered from Amazon.ca might technically be “available through the Internet,” it is

unlikely that the exception is intended to capture works in physical format, regardless of how they are acquired. Rather, it is safe to assume that the exception applies only to works in digital format that are posted on the Internet. Second, the exception is not available if

- the University, or person acting under its authority, does not mention the source and, if given in the source, the name of the author, performer, maker, or broadcaster (depending on the subject-matter);
- the material, or the website where it is posted, is protected by a technological protection measure that restricts access to the material – for example, newspaper content that is behind a paywall;
- the material is protected by a technological protection measure that restricts the doing of the act itself – for example, a digital lock that is intended to prevent the work from being copied;
- a clearly visible notice prohibiting the act – but not merely the “©” copyright symbol – is posted either on the material or on the website where it is posted; or
- the person who does the act knows or should have known that the material was made available through the Internet without the consent of the copyright owner – for example, if a song or video is streamed or downloaded from an unauthorized website.

C. OTHER EXCEPTIONS

1. Non-Commercial User-Generated Content

The *Copyright Act* also contains a special exception for user-generated content (UGC).

Under Section 29.21, an individual may use an existing work or other subject-matter that is published or otherwise publicly available to create a new original work, and the individual (or, with the individual’s consent, a member of the individual’s household) may use the new work or authorize an intermediary to disseminate it, provided that

- the new work is used, or authorization is given to disseminate it, solely for non-commercial purposes;
- the source and, if given in the source, the name of the author, performer, maker, or broadcaster of the existing work or other subject matter is mentioned, if it is reasonable in the circumstances to do so;
- the creator of the new work had reasonable grounds to believe that the existing work or other subject-matter was not infringing copyright; and
- the use of the new work, or the authorization to disseminate it, does not have a substantial adverse effect, financial or otherwise, on the exploitation or potential exploitation of the original work or other subject-matter, including that the new work is not a substitute for the existing one.

It seems clear that most University teaching and research, including class assignments, are non-commercial. Consequently, this exception may provide considerable latitude for the creation of UGC, in both digital and physical formats, for educational purposes. However, the statutory conditions for the exception must be taken seriously. For example, the exception is unlikely to apply to the creation and distribution of course packs, for which an existing market exists and where a user-generated collection might be a substitute for the original work. Similarly, the UGC must be truly “original”; simply posting an

excerpt of a Hollywood movie on a course website is unlikely to suffice (and might well be considered a substitute for the existing work).

D. EXCEPTIONS TO INFRINGEMENT: THE BOTTOM LINE

Both the fair dealing and the specific educational exceptions in the *Copyright Act* provide faculty and staff, as well as students engaged in academic research or writing, with numerous possible exceptions that may allow them to deal with works and non-traditional subject matter in ways that might otherwise be considered copyright infringement. However, it is important to remember that these exceptions are not absolute. They contain strict conditions and restrictions that, if not observed, will render the exceptions inapplicable. Even fair dealing for education, which some commentators consider a blanket exemption for educational use, is subject to a critical and overarching requirement: the use must be fair, which is a fact-specific assessment. The University's [Fair Dealing Guidelines](#) are available to help determine when that exception might apply.

FREQUENTLY ASKED QUESTIONS

I. TEACHING

A. COURSE MATERIALS AND COURSE WEBSITE

1. When can I copy or use materials without seeking permission?

In general, you must seek permission from the copyright owner before copying materials and including them in your course packs, handing them out to your students during class, or posting them to a course website or LMS unless one of the following is true:

- the work is in the public domain, meaning that more than 70 years have passed since the end of the year in which the author died;
- the University has a licence to reproduce the material, whether directly from the copyright owner or from a collective society authorized to grant the licence;
- the material is licensed for use in this manner by a Creative Commons licence or some other form of public licence;
- the copyright owner has made the material available under an open source agreement that permits reproduction of this type;
- the use is not of a substantial part of the work;
- the use qualifies as “fair dealing”, meaning that it is both for an allowable purpose (research, private study, education, parody, satire, criticism, review, or news reporting) and is “fair”, that and any mandatory attribution requirements have been satisfied; or
- the use falls within a specific exception in the *Copyright Act*.

2. Do I need permission to copy or post articles that I have written?

As long as you own the copyright in the materials you have written – including any graphics, photographs, or other illustrations they include – you may copy the materials and include them in your course pack, distribute them to your class, or post them on your course website or LMS.

If you are a faculty member, then, pursuant to the [University's Copyright Policy](#), you (and not the University) own the copyright in the works you create during your employment with the University. However, if your work has been published, be sure to check the terms of your publishing agreement. If you have assigned the copyright in your work to the publisher, or if you have granted an exclusive licence in the work, you may need permission from the publisher to copy and distribute it even though you are the author. Also, if you wrote the article in collaboration with someone else, you will need permission from your co-authors before copying or posting it. Similarly, if the article includes graphics or illustrations that belong to someone else, you will need their permission. Even in those types of circumstances, however, an exception may apply that allows your intended use without permission from the rights holder.

3. Can I include copies of my lecture slides in my course materials and post them online?

Yes, as long as you obtain permission from the copyright owner for any third-party content that the slides contain (assuming that content is protected by copyright and no exception applies) or remove that third-party content before you post the slides. For example, you may want to create a second version of your lecture slides that do not include third-party content. If you intend to post slides on your course website or LMS that were prepared by students or guest lecturers, make sure to seek their permission and ask them to remove any copyright-protected content. If you think that your use may constitute fair dealing, consult the [Fair Dealing Guidelines](#) for more information.

4. What am I allowed to do under the fair dealing exception?

The *Copyright Act* permits fair dealing with copyright-protected material for purposes of research, private study, education, satire, parody, criticism, review, or news reporting.

Fair dealing is fact- and context-specific. Among other things, ***reproducing material for educational purposes does not automatically qualify as fair dealing; the dealing still needs to be considered fair.*** You can learn more about fair dealing by consulting the University's [Fair Dealing Guidelines](#).

Keep in mind that it will not be necessary to consider fair dealing if the University has an existing licence that allows your intended use.

Finally, also keep in mind that the U.S. "fair use" exception to copyright infringement is different from the Canadian fair dealing exception. It should not be relied on when determining whether your actions are acceptable.

5. What am I allowed to do under specific user's rights in the *Copyright Act*?

There are exceptions set out explicitly in the Copyright Act that apply to not-for-profit educational institutions, as described above. For example, on the premises of the University, for not-for-profit educational or training purposes, you can do the following without first obtaining permission from the copyright owner:

- Make a copy of, or post on your course website or LMS, material posted on the Internet (so long as you mention the source of the material and, if given in the source, the name of the author of the material) unless:

- there is a clearly visible notice on the material you want to use, or on the website to which the material is posted (often located within the website’s terms and conditions of use at the bottom of the webpage), prohibiting the use of the material for this purpose;
- the material, or the website on which it is posted, is protected by a technological protection measure that restricts access or copying, such that you would have to circumvent that protection (i.e., break a digital lock) to use the material; or
- you know or should have known that the material was made available through the Internet without the consent of the copyright owner (for example, because you acquired it from an unauthorized file-sharing or streaming site).
- Post to your course website or LMS (accessible only by students enrolled in the course or other people specifically authorized by the University) any audio or video recording of a lecture that includes the material in question.

However, you should always consider the specific requirements of any exception that you seek to rely on. If those requirements are not met, the exception will not apply.

6. Can I copy a work to replace damaged or missing pages of works located in a University library?

Yes, but consult the library first. If the work is rare or unpublished, and is deteriorating, damaged, lost, or at risk of deterioration, damage, or loss, the library can help you make a copy of the entire work, unless another copy is commercially available within a reasonable time and at a reasonable price.

7. Am I allowed to copy a work that is in Braille?

Yes. Where a work has been copied into an alternative format for people with a print disability – for example, audio, Braille, large print, or machine-readable format – you are permitted to make a copy for an authorized person who is unable to read the work in its original format because of a print disability, as long as the University does not have knowledge of a copy of the work in the alternative format that is commercially available on the Canadian market at a reasonable price and within a reasonable time. Please contact accessibility.services@utoronto.ca for support with alternative formats.

Please note: you can make a copy of a literary, musical, artistic, or dramatic work, or a sound recording or fixation of a performer’s performance, for these purposes, but not a cinematographic work.

8. I am trying to download an article that I found online but the website has some kind of technological measure that is restricting my access to the work. Can I try to deactivate or bypass the technological measure so that I can download the essay?

No. Section 41.1 of the *Copyright Act* prohibits the circumvention of technological protection measures (TPMs), even if the underlying purpose of the user is not infringing. If you circumvent an access control, you will likely be in violation of the anti-circumvention provisions of the *Copyright Act*.

Circumventing a copy control, on the other hand, is not necessarily illegal, but it may disqualify you from some of the exceptions in the *Copyright Act*. For more information, please contact the Scholarly Communications and Copyright Office at copyright@library.utoronto.ca.

9. Can I make content, such as a song or a video, available on my course website or LMS?

If the material is available online, you may post it on your website or LMS, provided that:

- only University students and faculty can access the website;
- the source of the work (and, if given in the source, the names of any applicable authors, performance, sound recording makers, and broadcasters) is mentioned;
- you do not have reason to believe that the copy of the material is an infringing copy or that its use is prohibited by the copyright owner;
- you did not break a digital lock or circumvent a technological protection measure to gain access to the copy.

Proceed with caution when accessing materials through file-sharing sites or streaming services like YouTube, since copies posted on these sites may be infringing.

If the material is not available online, you need to make sure either you either have permission from the copyright owner or that the use falls within an exception in the *Copyright Act*. In the case of music and video content, this may include a producer or distributor (in the case of a film or TV show), a record label (in the case of a sound recording or music video), /or a music publisher (in the case of any song – even where permission is obtained from a record label to use the sound recording or music video in which it appears).

10. Can I provide links to other websites on my course website or LMS?

Yes, but proceed with caution. Although merely providing a hyperlink to another website's public content does not necessarily constitute copyright infringement, it is possible that linking to infringing content may itself infringe copyright. It is also possible that linking to public content in a way that makes it to available to a new segment of the public may constitute copyright infringement.

You should also be aware that many websites contain terms and conditions of use that prohibit third parties from linking to them. Before linking to any website, check its terms and conditions carefully to ensure that you are not breaching them by providing a link. Also be careful that the linked website does not contain defamatory material, as providing the hyperlink (accompanied by words of recommendation to view the material) could amount to defamation. Although these are not specifically copyright issues, they could still expose you – and potentially the University – to legal liability.

11. How do I get help connecting course materials to my course website or LMS?

There are several different ways that you can make your course materials available to your students. These options include:

- Posting your material in the Library Course Reserves module ([submission information](#))
- Uploading your material directly to a course website or LMS
- Placing print copies of books on short term loan in the library
- Offering a custom course pack in print or digital format

Visit <https://onesearch.library.utoronto.ca/copyright/course-readings-information-instructors> for details on each of these options and how the library can support you. You can also contact the Syllabus Service, at syllabus.service@library.utoronto.ca, which assists faculty and staff at the University in making course materials available to students in a manner that respects Canadian copyright law and existing University licences.

Further, please refer to the library's [Copyright Resources](#), which includes the University's Fair Dealing Guidelines and Copyright Roadmap. These resources will help you decide how to make your course materials available to your students.

Remember, you can also always contact the Scholarly Communications and Copyright Office, at copyright@library.utoronto.ca, for further guidance.

12. What do I do if I want to post material to a course website or LMS but the use does not qualify as 'fair dealing'?

It is possible that the University of Toronto Libraries have already licensed the content you would like to use in the extensive e-Resources collection available to University faculty, staff, and students. Acceptable use is indicated in the terms of each licence. For further information regarding the permitted use of materials please refer to the University's [Copyright Roadmap](#).

It is possible that, even if fair dealing does not apply, another exception or user's right may be available to you. If not, the University of Toronto Libraries can also investigate alternative options (such as an eBook) and negotiate copyright clearance for items that exceed our current licences at no cost to you.

If you have any questions, or require any further information please do not hesitate to contact the staff of the Scholarly Communications and Copyright Office at copyright@library.utoronto.ca

For immediate assistance with the copyright status of items on your reading lists for current and future classes, you may also contact copyright & licensing specialists at syllabus.service@library.utoronto.ca

13. I found an image on the Internet that I want to use in my lecture slides. Can I do it?

It depends. An image or clip art on the Internet is protected by copyright in the same way as an image in a book or on paper. If you want to use it without a licence, a user's right needs to apply, or the work needs to be in the public domain or available through an open access licence. Otherwise, you will need to obtain permission from the copyright owner.

In some cases, you may be able to rely on the exception in section 30.04 of the *Copyright Act* for works available through the Internet. However, that section will only apply if the image (or the website where it is posted) is not protected by a technological protection measure, there is no clearly visible notice prohibiting the use of the image for the purpose you have in mind, and you have no reason to believe that the image was made available online without the consent of the copyright owner. You should always check the website's terms of use or legal notices, as well as the image itself, to determine whether the use is prohibited.

Best practices also include removing unlicensed third-party content from your lecture slides before you post them online. You may want to create a second version of your lecture slides that do not include the third-party content for this purpose.

14. I'm finding copyright confusing. Where can I get help?

Copyright is complex. The University offers a variety of resources and support to help you navigate these issues. Among other things, you can

- Visit the Scholarly Communications & Copyright Office during office hours, or contact the office by email at copyright@library.utoronto.ca;
- Request an in-person consultation;
- Attend an orientation session, such as the Copyright and Fair Dealing Fundamentals sessions offered at the start of every term;
- Reach out to the Library or Syllabus Service for assistance;
- Watch for copyright updates and news in University publications; or
- Visit the resources available on the University's website: <https://onesearch.library.utoronto.ca/copyright/resources>

B. LECTURES, TESTS, AND EXAMINATIONS

1. Can I write the lyrics of a song on the whiteboard without seeking permission?

Yes. You may make a handwritten copy of copyright-protected material in order to display it.

2. Can I type or scan the lyrics and show them to the class on a projector or a computer monitor without seeking permission?

Yes. You may make a non-manual copy of copyright-protected material in order to display it, unless the material is commercially available – i.e., available on the Canadian market within a reasonable time and at a reasonable price – in which case a licence needs to be obtained.

3. Am I allowed to play a song or a video during a lecture?

Yes. You do not need to seek permission to play a song or an audiovisual work, for educational purposes, to an audience consisting primarily of University students and located on the premises of the University. Bear in mind, however, that this exception applies only to *playing* the song or video; you are not allowed to *copy* the material without permission, and the applicable exception requires that you not have reasonable grounds to believe that the work is an infringing copy. Therefore, the material must be obtained lawfully – either purchased commercially, licensed from an authorized source, or obtained through the Internet in accordance with section 30.04 of the Copyright Act, set out above.

If you are showing a television program or movie from a subscription service, remember to check the terms and conditions of use between the subscriber and the service. If the agreement is limited to “personal” or “household” use, a classroom use is not permitted.

4. Am I allowed to play a live broadcast of a program during my lecture?

Yes. Whether the program is broadcast on radio or television or streamed via the Internet, you may play it in class at the same time as it is transmitted to the public without seeking permission.

5. Am I allowed to make a video recording of a television program and show it in class?

Sometimes, if you're diligent. Certain news programs (but not other programs) may be copied and performed in public without permission. Under the Copyright Act, you are entitled to make copies of news and news commentary programs – excluding documentaries – and show them during your lectures.

For programs other than news and news commentary (such as sitcoms or movies shown on TV), royalties must be paid, or permission granted by the copyright owner, before showing them in class. You can make a recording and use it strictly for evaluative purposes – i.e., to determine whether or not you want to show it in class – for up to 30 days, but a licence must be obtained before it is shown to any audience. After 30 days, the copy must be destroyed or a licence must be obtained and royalties paid.

Please make sure to maintain careful records detailing when copies of broadcast programs are made, performed in public, and destroyed.

Also, please note that none of the above exceptions to infringement applies where the copy of the broadcast was received by unlawful means. For example, it would infringe copyright to show any program – even a news or news commentary program – that was copied from an illegal satellite transmission or an unauthorized Internet streaming site.

6. Does the University own any audiovisual materials that I can use during a lecture?

Yes. The University of Toronto Libraries offers a collection of over 20,000 audiovisual titles, including Blu-ray discs, DVDs, videos, and with heritage formats such as 16mm films, that are available for classroom screening or individual study.

Visit <https://onesearch.library.utoronto.ca/> to search for material available.

A growing number of online video resources is now offered by the University Libraries, available for classroom and individual streaming when logged in with your UTORID:

<https://onesearch.library.utoronto.ca/find/streamingvideo>

Please contact media.common@utoronto.ca for further support or questions about acquiring specific titles.

7. Am I allowed to access and show a website live during a lecture?

Yes, subject to any terms and conditions governing the use of the website or the content it contains. Make sure to check the website's terms and conditions before showing the website to your class. Also, if you have reason to believe that the material is infringing someone's copyright, do not show it to your class. For example, do not play a clip of a film downloaded from an illegal file-sharing website, and use caution when accessing material from user-driven streaming sites like YouTube.

8. Are students allowed to perform a song or a play during a lecture?

Yes. University students may publicly perform a song, play, or other “work” on the premises of the University for educational purposes as long as the audience consists primarily of University students or instructors.

9. Do I need to obtain permission to record student performances ...

(a) ... from the student performers themselves?

Yes. Every performer has a copyright in his or her performance, including the sole right to “fix it in any material form.” While the exception described in the answer to the previous question provides the University with the right to have University students perform live music (under certain circumstances), it does not permit the performance to be recorded. Therefore, permission must be obtained from the performer. One way to do this is to include in the course syllabus a statement that, by taking the particular course, the student provides the University with consent to record any student performances.

(b) ... from the composer(s) and/or author(s) of the work?

Yes, at least in theory. Under section 3(1)(d) of the *Copyright Act*, the composer of a musical work or the author of a literary or dramatic work has the sole right to make a sound recording or cinematograph film of the work that is being performed. As with a performer’s performance, the exception described in the answer to the previous question allows for the performance of the work only, not the recording of it. In practice, however, a licence is rarely obtained to make an initial recording of a work; the licence is generally obtained only if and when the maker of the recording wishes to exploit it in public, whether or not for commercial gain.

Obviously, no permission is required to reproduce a work that is in the public domain, but caution must be exercised here as well, since it is not unusual for copyright to subsist in a newer arrangement of an older work that has fallen into the public domain.

(c) ... from the conductor or director of the performance?

Probably. Although the issue has never come up in Canada, there is authority in other Commonwealth countries to suggest that a conductor is to be considered a “performer” for copyright purposes, thus triggering the same rights enjoyed by the other performers (see above).

10. Do I need to seek permission for the materials I incorporate into my lecture slides?

If you display your lecture slides only during your class, you are allowed to incorporate copyright material into them without obtaining permission. The *Copyright Act* provides for a limited exception that applies to the display of these materials, for educational purposes, on the premises of the University.

However, if you make copies of your lecture slides to distribute to your students or post online, you may need to obtain permission to use any copyrighted material, subject to the exceptions set out above in connection with course materials (e.g., material that is available online). The “display” exception does not extend to the distribution of printed copies. While it is possible that your use may be fair dealing, it

needs to be assessed on a case-by-case basis. Check the University's [Fair Dealing Guidelines](#) for more information.

To avoid alleged infringement, some instructors make two versions of their lecture slides – one for use in class only, in which they can incorporate graphics, photos, images, excerpts from literary works and other materials that are subject to copyright, and another to hand out to their students, from which they have removed any copyright-protected material that belongs to third parties.

11. I often use copyright-protected materials in the classroom – I use graphics in my PowerPoint slides, show excerpts from movies, and play recorded music. Can I make audio or video recordings of my lectures and make them available on my course website?

Yes, as long as you

- ensure that the website is available only to students enrolled in your course or to other people specifically authorized by the University;
- destroy any fixation of the lecture within 30 days after the students in the course have received their final evaluations; and
- take measures that can reasonably be expected to ensure that the lecture is accessed only by students in your course (or other persons acting under the University's authority) and that students cannot reproduce or transmit the lecture other than as permitted in the *Copyright Act* – in practice, to other students in the same course.

12. What can I include in an exam or test without seeking permission?

You may do the following acts:

- make a copy of or translate a work (unless the material is commercially available – i.e., available on the Canadian market within a reasonable time and at a reasonable price – in a medium appropriate for the test or exam, in which case a licence needs to be obtained); and
- publicly perform a work (i.e., play a song or movie) or play a radio, television or Internet broadcast.

13. What about including copyright-protected material in an exam that I plan to administer online to students located off campus?

You can use the material in the same way as you would in an in-class exam, as long as you

- ensure that the exam is available only to students enrolled in your course or to other people specifically authorized by the University;
- destroy any fixation of the exam within 30 days after the students in the course have received their final evaluations; and
- take measures that can reasonably be expected to ensure that the exam is accessed only by students in your course (or other persons acting under the University's authority) and that students cannot reproduce or transmit the exam other than as permitted in the *Copyright Act* – in practice, to other students in the same course.

C. GOVERNMENT PUBLICATIONS

1. Do I need to obtain permission before using materials created or published by the government?

Possibly. The Crown – that is, the federal or provincial government, as applicable – owns the copyright in all works prepared or published by any government department, indefinitely if the work is unpublished and, if the work is published, for a period of 70 years following the end of the first year of publication.

As of 2013, departments and agencies became responsible for all matters related to Crown copyright and licensing of their publications, including historical publications referencing Public Services and Procurement Canada. If you would like to copy government works for non-commercial purposes, including education, please refer to the department or agency that created that information. Learn more here for federal government works:

<http://publications.gc.ca/site/eng/services/aboutCopyClearance.html>.

For provincial government works, check the rules applicable to that province.

If you want to revise, adapt, or translate government works, you must first obtain permission. Please contact the staff in the Scholarly Communications and Copyright Office at copyright@library.utoronto.ca for further support.

II. RESEARCH

1. From a copyright perspective, does it make any difference whether I am teaching or conducting research?

Yes and no. Research, whether conducted by faculty or by students, falls directly within one of the “fair dealing” purposes, as does education. In either case, you can deal with a work so long as your dealing is fair. In deciding whether your dealing is fair, your purpose will be relevant. Check the University's [Fair Dealing Guidelines](#) for more information.

2. Does it matter whether or not the research is published?

When research leads to a published article or other work, it is not entirely clear whether the work will continue to be considered fair dealing for “research” or whether another allowable purpose – either criticism or review – will need to be relied upon instead. As a result, it is extremely important, both in your own writing and in that of your students, to observe proper citation practices.

Quite apart from issues of academic honesty, failure to acknowledge all sources relied upon could result in copyright infringement. To fall within the “fair dealing” exception for criticism or review, a work must mention the source (i.e., the publisher) of each work quoted or paraphrased, along with the author of each such work (if mentioned in the published work consulted). So, for example, while quoting substantial portions of a novel in a critical essay may qualify as fair dealing for “criticism or review”, the exception will not be available unless the source is properly acknowledged. Similarly, where audiovisual works are used for criticism or review, both the performers and the maker of the sound recording must be named, if their names are given in the source work.