

USING AUDIOVISUAL MATERIALS AT THE UNIVERSITY OF TORONTO: COPYRIGHT CONSIDERATIONS

This policy was created in consultation with the Office of the Provost, the Office of the General Counsel, outside counsel, and the Scholarly Communications and Copyright Office.

This policy does not change any existing rules or alter in any way the established practice of the use of films or other audiovisual materials for teaching, research, or other educational purposes at the University of Toronto. It primarily serves to clarify the use of films and other audiovisual materials by students, student groups, and other campus organizations.

Questions about the policy can be directed to the following University of Toronto Libraries contacts:

Scholarly Communications and Copyright Office scholarly.communications@library.utoronto.ca	Media Commons media.common@utoronto.ca
--	--

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. That includes movies, television programs, and other audiovisual works. The law also provides for a number of so-called "user rights", which make it permissible to do certain things that might 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.

At the University of Toronto, audiovisual materials are used in a variety of ways, both in the classroom and in other settings. The legal considerations that apply in each case will depend on the context of each use. As a general principle, however, it is fair to say that, ***where a movie, television program, or other audiovisual material is shown in a public setting on campus – even in a classroom – a licence will be required unless the showing is for education and training purposes (or, where fair dealing may apply, for other allowable purposes), as explained below.*** If the showing is for educational and training purposes, it may be subject to an exception in the *Copyright Act*, provided that other specific statutory requirements are met.

A. Copyright in Audiovisual Works: The Basics

For copyright purposes, movies, television programs, and other audiovisual materials are protected as "cinematographic works", which in turn fall into the general category of "dramatic works" (even if they have no particular "dramatic" quality). The exclusive rights of the owner of copyright in a dramatic work last for the life of the author plus 50 years 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;
- 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); and
- communicate the work to the public by telecommunication (i.e., by television broadcast or over the Internet), including by making it available to individual members of the public on demand.

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

Where the audiovisual work is broadcast, further copyright protection may apply to the broadcast signal in which it is transmitted. Among other things, a television broadcaster generally has the exclusive right to perform its signal, or authorize its performance, in a place open to the public upon payment of an entrance fee.

It is an infringement of copyright to do, without permission from the copyright owner, any act that only the copyright 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 to use an audiovisual work comes in the form of a licence, either directly from the copyright owner, via a distributor or agency representing the copyright owner, via a public licence such as a Creative Commons licence, or from a collective society that represents multiple copyright owners.

B. Exceptions to Copyright Infringement

Notwithstanding the exclusive rights of the copyright owner, there are certain exceptions to copyright infringement – sometimes referred to as “users’ rights” – that can be relied on in order to use works without obtaining consent from the copyright owner.

For example, under section 29 of the *Copyright Act*, R.S.C. 1985, c. C-42, the use of certain works for the purposes of research, private study, education, parody or satire may constitute “fair dealing”. However, the concept of fair dealing is complex, fact-specific, and often imprecise. Fair dealing is not defined in the *Copyright Act*; instead, whether an individual dealing constitutes “fair dealing” will depend on a case-by-case determination of whether the dealing is for one of the allowable purposes set out in the *Copyright Act* and whether the dealing is “fair”. To determine whether the dealing is “fair”, the court will consider the purpose of the dealing, the character of the dealing, the amount of the dealing, alternatives to the dealing, the nature of the work and the effect of the dealing on the market for the work. For more information on fair dealing, please consult the [University’s Fair Dealing Guidelines](#).

In addition to fair dealing, the *Copyright Act* includes several exceptions that apply specifically to not-for-profit educational institutions, including the University. Some of these exceptions apply specifically to the use of audiovisual materials. However, in order to qualify for these exceptions, the activity must be for the purposes of education and training and take place on the premises of the University.

1. Reproducing, Performing or Communicating a Work for a Test or Exam

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 (including an audiovisual work) as required for a test or exam. Any performance of the work in public or communication of the work by telecommunication to the public must take place on the premises of the University. Further, if the work is “commercially available” in a medium suitable for the purpose, and if its use is not covered by fair dealing or another exception, a licence must be obtained before using it for a test or exam.

2. Public Performance by or for Students

Section 29.5 of the *Copyright Act* provides, among other things, that the following uses of audiovisual works, if done on the premises of the University, may not infringe copyright:

- 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 an audiovisual work, provided that it is not an infringing copy.

In each case, however, the activity must be undertaken by the University or someone acting under its authority (which typically will not include student groups), and the audience must consist primarily of students of the University, instructors acting under its authority, or those directly responsible for setting a curriculum for the University. If those conditions are not met, or if the performances are not carried out for education or training purposes and not for profit (i.e., anything more than cost recovery), the exception will not be available and the permission of the copyright owner will likely need to be obtained. In other words, while this exception might apply to the showing of a movie in a classroom or some other setting directly related to a course or program of study (including via distance education), it would not permit the same movie to be shown at a student association’s movie night or other social event.

Note also that this exception does not apply to a broadcast or transmission that is unlawfully received or an infringing copy. Content acquired through unauthorized streaming sites or illegally decoded satellite signals, for example, will not qualify for the exception and may attract liability.

3. Reproduction and Public Performance of Broadcast or Streamed Programming

Other exceptions permit the reproduction of broadcast programming, in certain circumstances, to facilitate its later performance. Here again, though, the specific requirements of each exception must be met.

Under section 29.6 of the *Copyright Act*, 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 “communication to the public” (which includes both traditional broadcast and Internet transmission), 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 on the premises of the University, for an audience consisting primarily of University students, for educational or training purposes.

Similarly, section 29.7 of the *Copyright Act* permits the University, or a person acting under its authority, to make a single copy of any other program, including a documentary, at the time it is “communicated to the public”, and to keep it for up to 30 days for the purpose of deciding whether to use the copy for educational or training purposes. After 30 days, the University must either destroy the copy or pay any royalties and/or comply with any terms and conditions fixed under the *Copyright Act* for the making of the copy and/or its performance in public.¹ Further, if performed in public, the audience must consist primarily of students of the University, on the premises of the University, and the performance must be for educational or training purposes. Otherwise, the exception will not apply.

Under both section 29.6 and section 29.7, the broadcast or stream must also have been lawfully received. Content acquired through unauthorized means will not qualify and may attract liability

4. Work Available Through the Internet

Under section 30.04 of the *Copyright Act*, the University, or a person acting under its authority, may, for educational or training purposes, do any of the following things with a work or other subject-matter 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 these acts.

This 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 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 material, or the website where it is posted, is protected by a technological protection measure (sometimes called a “digital lock”) 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;

¹ As of January 1, 2014, there is no tariff in place for these uses, which means for the moment that there are no royalties to be paid for retaining these copies for more than 30 days or performing them in public, as long as the copies are made and performed only for education or training purposes and for audiences consisting primarily of students of the University. However, other terms and conditions remain in force, including the requirement that copies made under section 29.7 be marked with a unique number or other reference code and that certain prescribed records be kept of the making and destruction of each copy and retained for two years after the copy is destroyed. See Educational Program, Work and Other Subject-Matter Record-Keeping Regulations, SOR/2001-296.

- 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 movie or television program is streamed or downloaded from an unauthorized site or service like The Pirate Bay.

C. For Further Information

As can be seen from the discussion above, these exceptions are not absolute. They contain strict conditions and restrictions that, if not observed, render the exceptions inapplicable. They are also limited to education and training purposes; reproducing or publicly performing works for pure entertainment or recreation will generally require a licence and the payment of a fee. For further assistance, please consult the [University’s Fair Dealing Guidelines](#) or contact:

Scholarly Communications and Copyright Office scholarly.communications@library.utoronto.ca	Media Commons media.common@utoronto.ca
--	--

USING AUDIOVISUAL MATERIALS AT THE UNIVERSITY OF TORONTO: FREQUENTLY ASKED QUESTIONS

For one of my classes, I have to provide a presentation to my instructor and classmates. Do I need a licence to show a scene from a movie or TV show as part of my presentation?

No. If the performance takes place in your classroom and is presented primarily to University students or instructors for educational purposes, and the copy of the movie or TV show was not obtained from an unlawful source, you do not need to obtain permission from the copyright owner.

I live on campus and would like to watch a movie or TV show with my floor mates in the common area. Do I need a licence?

As long as the showing is “private” (that is, essentially limited to your private circle of friends or floor mates) you should not need a licence. However, if you advertise the showing or invite a wider audience that could not reasonably be understood to be private, different considerations may apply and a licence may be required.

I am a member of a student organization or association. Do I need to obtain a licence to show a movie at an on-campus movie night for students and charge an admission fee?

Yes. Even if the audience is limited to students of the University, the event is being held for recreational purposes, not for educational or training, and a licence is therefore required. Charging an admission fee may also mean that the use is “for profit” or with a “motive of gain”, a further bar to reliance on the educational exceptions in the *Copyright Act* – especially if the total fees received are greater than the costs (including overhead) of the holding event.

What if I don’t charge an admission fee for the movie night?

Even if the event is “not for profit” and without “motive of gain”, the movie is being shown for recreational purposes, not for education or training, and a licence will still be required.

What if the movie I plan to show was released more than 50 years ago?

The term of copyright is determined by reference to the life of the author, not the release or publication of the work. Copyright subsists for the life of the author plus 50 years. Identifying the “author” of an audiovisual work is not always easy, since many people (director, screenwriter, producer, etc.) will have contributed to it. In any event, copyright in a movie or TV show will usually last considerably longer than 50 years after its initial release. For further assistance, contact:

Scholarly Communications and Copyright Office scholarly.communications@library.utoronto.ca	Media Commons media.common@utoronto.ca
--	--

Do I need a licence to show a movie to fellow members of my student organization to facilitate debate and discussion within our group?

It is possible that a movie shown by a student group to its members to facilitate educational debate and discussion within the group (for example, a documentary about discrimination shown by a LGBTQ club to an audience consisting only of its members, without charging admission) might constitute fair dealing for the purposes of education, research or private study,

but that would depend on the particular facts of the case. Consult the [University's Fair Dealing Guidelines](#), or contact the Scholarly Communications and Copyright Office at scholarly.communications@library.utoronto.ca

I would like to organize a social event for students and members of the public that will include showing a movie or TV show, either for a fee or for free. Do I need to obtain a licence?

Yes. Because the social event is not primarily for University students, and the showing is for recreational purposes rather than for education or training, a licence will be required. It makes no difference whether or not an admission fee is charged.

I would like to organize an event at which short excerpts from various movies and TV shows are shown on multiple screens for ambience. Do I need a licence?

It depends on whether the excerpts you plan to show are “substantial parts” of the larger works. You should not presume that even short excerpts of a long movie are not “substantial” – this is a question of fact that needs to be assessed on a case-by-case basis and may require expert advice. Contact staff from one of the following offices for support in this area:

Scholarly Communications and Copyright Office scholarly.communications@library.utoronto.ca	Media Commons media.common@utoronto.ca
--	--

I am a Student Life staff member and I would like to show a movie to fellow staff members for the purpose of student or staff leadership development. Do I need a licence?

Possibly. While this use may qualify as fair dealing for education that particular exception has yet to be interpreted by Canadian courts and the scope of “education” in this context remains unclear. In any event, whether a licence is required will also depend on whether your use of the movie is qualitatively fair. You might choose to seek a licence out of an abundance of caution. Contact the Scholarly Communications and Copyright Office at scholarly.communications@library.utoronto.ca for assistance before you proceed.