

Copyright Matters!



Some Key
Questions & Answers
for Teachers



cmecc

4th
Edition

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Barristers and Solicitors

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Council of Ministers of Education, Canada
Canadian School Boards Association
Canadian Teachers' Federation

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Canadian Teachers' Federation
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© Introduction

The publication of this 4th Edition of *Copyright Matters!* takes into account key changes that have occurred in the area of copyright since the 3rd Edition, published in 2012. Copyright law continues to evolve in response to existing and emerging technologies, international agreements, and the need for reasonable balance between users and creators of copyright-protected works.

We hope that teachers will continue to find *Copyright Matters!* a valuable tool in acquainting themselves with basic copyright rules. This booklet is a starting point for increasing the awareness of your rights and obligations, as a teacher, in selecting and using copyright-protected materials at your educational institution.

The authors have sought to simplify a very complex subject. The booklet is not a substitute for legal advice, which should be sought in cases where the application of general principles is unclear.

1. What is the purpose of this booklet?



This booklet gives teachers user-friendly information on copyright law, covering items from the Canadian *Copyright Act* and its regulations, contractual and tariff arrangements with copyright collectives, and court decisions. This booklet is available in print and on-line. The on-line version is updated as changes in the copyright law take place. It provides information about copyright law and copyright collectives and how they relate to the use of resources on and off school premises. More detailed information is available from many printed sources, from the Internet, and from your ministry or department of education. A list of sources appears at the end of this booklet. **Education departments and ministries, as well as school boards across the country, encourage awareness of and respect for copyright in our education systems.**

2. Why is copyright important?



Just as you would want to protect anything that you own, creators want to protect their works. As students, we were all taught the value of original thinking and the importance of not plagiarizing the works of others. Since teachers use copyright-protected materials as well as educate the copyright owners and users of tomorrow, they have a unique responsibility to set the right example. The works of others should not be used without their permission unless the use is permitted by the *Copyright Act*. Teachers must be cognizant of the copyright status of resource materials in their possession.

3. What is fair dealing?



The *Copyright Act* provides that it is not an infringement of copyright to deal with a work for the purposes of research, private study, criticism, review, news reporting, education, satire, and parody, provided the dealing is “fair.”

The following guidelines describe the activities that are permitted under fair dealing in non-profit K–12 schools and provide reasonable safeguards for the owners of copyright-protected works in accordance with the *Copyright Act* and decisions of the Supreme Court of Canada.

FAIR DEALING GUIDELINES

1. Teachers, instructors, professors, and staff members in non-profit educational institutions may communicate and reproduce, in paper or electronic form, short excerpts from a copyright-protected work for the purposes of research, private study, criticism, review, news reporting, education, satire, and parody.
2. Copying or communicating short excerpts from a copyright-protected work under these *Fair Dealing Guidelines* for the purpose of news reporting, criticism, or review should mention the source and, if given in the source, the name of the author or creator of the work.
3. A single copy of a short excerpt from a copyright-protected work may be provided or communicated to each student enrolled in a class or course
 - a. as a class handout;
 - b. as a posting to a learning or course-management system that is password protected or otherwise restricted to students of a school or postsecondary educational institution;
 - c. as part of a course pack.

4. A short excerpt means:
 - a. up to 10 per cent of a copyright-protected work (including a literary work, musical score, sound recording, and an audiovisual work);
 - b. one chapter from a book;
 - c. a single article from a periodical;
 - d. an entire artistic work (including a painting, print, photograph, diagram, drawing, map, chart, and plan) from a copyright-protected work containing other artistic works;
 - e. an entire newspaper article or page;
 - f. an entire single poem or musical score from a copyright-protected work containing other poems or musical scores;
 - g. an entire entry from an encyclopedia, annotated bibliography, dictionary, or similar reference work.
5. Copying or communicating multiple short excerpts from the same copyright-protected work with the intention of copying or communicating substantially the entire work is prohibited.
6. Copying or communicating that exceeds the limits in these *Fair Dealing Guidelines* may be referred to a supervisor or other person designated by the educational institution for evaluation. An evaluation of whether the proposed copying or communication is permitted under fair dealing will be made based on all relevant circumstances.
7. Any fee charged by the educational institution for communicating or copying a short excerpt from a copyright-protected work must be intended to cover only the costs of the institution, including overhead costs.

4. Does fair dealing permit the making of a digital copy from a print source?



Yes, as long as the copying is within the rules set out in the *Fair Dealing Guidelines*.

5. Can teachers copy or post an entire musical score or does the 10 per cent limit in the *Fair Dealing Guidelines* apply?



Musical scores are usually sold individually – that is, one musical work at a time. The 10 per cent limit applies, and a teacher may copy 10 per cent of a musical score under fair dealing.

Music is also contained in music books. An example is a music book containing several musical works. For such a music book, one may copy 10 per cent or one musical work in the book because it contains other musical scores. See 4(f) of the *Fair Dealing Guidelines*.

6. Can a teacher copy for instruction?

A teacher can copy (or take any other necessary action) to display a work protected by copyright. This permits the use of whiteboards and similar tools, overhead projection using a device such as an LCD screen, overhead, opaque, or slide projector, provided the work is used for the purpose of education and training and is not already commercially available in a medium that is appropriate for this purpose.

7. Can a teacher copy materials intended for one-time use?

No. Copying, scanning, or printing materials intended for one-time use is strictly prohibited.

“Materials intended for one-time use” are workbooks and exercise books into which a student records answers. These are materials created and intended for each student to have his or her own copy. Once a student completes the answers, these materials are of no use to another student.

Any copying from materials intended for one-time use exposes the person making the copy, the teacher, the school, and the school board to liability for copyright infringement.

This prohibition does not apply to reproducibles. A reproducible is not intended for one-time use, but is sold or provided with the rights holder’s authorization to reproduce it for educational use.

8. Can a teacher copy for tests and examinations?



Yes. Teachers in Canada may copy, translate, communicate electronically, show, or play any copyright-protected work for a test or examination, provided the work is not already commercially available in an appropriate medium for the purpose of a test or examination.

9. Can teachers and students use statutes, regulations, and court decisions?



Teachers and students can copy and communicate the text of federal, provincial, and territorial statutes, regulations, and judicial decisions for educational purposes from every province and territory except Manitoba, Quebec, and Nunavut.

10. What rights do students with perceptual disabilities have?



- Students with perceptual disabilities, including blind and visually impaired students as well as students with learning disabilities and other physical disabilities, are provided with alternative formats through production centres scattered across Canada. The alternative formats may include audiobooks, Braille, and e-text.
- Students, and educational institutions on behalf of students, may make a copy in an alternative format of a literary, dramatic, musical, or artistic work (but not an audiovisual work) in a format designed for a person with a perceptual disability.
- Translation, adaptation, and performance in public for the purpose of serving students with perceptual disabilities, as long as the work is not already commercially available in that format, are permitted.
- Educational institutions may not make a large-print book for a student with a perceptual disability without permission from the copyright owner.

11. What rights do school libraries have?



School libraries can:

- make a copy for the purpose of cataloguing, internal record keeping, for insurance purposes, or police investigation;
- make a copy for the purpose of restoration;
- use digital technology to deliver an interlibrary loan copy of a copyright-protected work.

Provided a replacement copy is not commercially available in a medium and of a quality that is appropriate for these purposes, school libraries can also:

- make a copy of a work “if the original is rare or unpublished and is deteriorating, damaged, or lost”;
- make a copy of a fragile document or recording for on-site consultation if the original cannot be viewed, handled, or listened to because of its condition;
- make a copy if the original is in an obsolete format, or is in danger of becoming obsolete, or the technology to use the original is unavailable or is in danger of becoming obsolete.

12. Can teachers play a sound recording or turn on a radio for students to listen to, or turn on a television for students to watch?



Yes. You can play sound recordings and turn on televisions and radios in the classroom, subject to all of the following conditions:

- it must take place on the premises of an educational institution;
- it must be for educational or training purposes;
- it must not be for profit;
- it must take place before an audience consisting primarily of students of the educational institution, persons acting under its authority, or any person who is directly responsible for setting a curriculum for the educational institution; and
- it must not involve a “motive of gain.”

This users’ right does not apply to recorded radio and television programs, but only to playing radio and television programs while they are being transmitted (by over-the-air broadcast, cable, satellite, or over the Internet).

Where music is performed for a non-educational objective, SOCAN and Re:Sound tariffs apply. Examples that require royalty payments include music performed for extracurricular activities such as an assembly, background music, a school dance, or a fashion show. Current statements of applicable fees can be found on the SOCAN Web site at www.socan.ca and on the Re:Sound Web site at www.resound.ca.

13. Can students perform a work protected by copyright, such as a play, on school premises?



Yes. An example is the performance of a play in a drama class. The same five conditions as those cited for playing sound recordings, listening to the radio, or watching television listed in the answer to the previous question must be met before this users' right applies.

14. Can music be performed without the copyright owner's permission?



The *Copyright Act* permits educational institutions to perform music, whether recorded or live, without payment or permission from the owner of the copyright. A person acting under the authority of a non-profit educational institution can:

- perform a musical work live if the performance is primarily by students of the educational institution;
- play sound recordings containing a musical work; and
- play radio and television programs containing a musical work while the program is being transmitted (by over-the-air broadcast, cable, satellite, or over the Internet).

The following conditions apply. The performance must:

- take place on the premises of an educational institution;

- be for educational or training purposes;
- not be for profit; and
- take place before an audience consisting primarily of students of the educational institution, persons acting under its authority, or any person who is directly responsible for setting a curriculum for the educational institution.

The *Copyright Act* permits the public performance of music in schools when it is “in furtherance of an educational object.” Performances that are not in furtherance of an educational object must be authorized by the copyright owner, or by a collective that represents the owner.

The following uses of live and recorded music are permitted by the *Copyright Act* and therefore **do not require** permission and payment:

- in school assemblies (e.g., a recording of “O Canada”);
- by a student in a presentation to other students, teachers, assessors, or parents (e.g., as part of a presentation during music class);
- in demonstration activities by students, primarily for other students, teachers, assessors, or parents, and for which any admission fee charged covers costs but does not make a profit (e.g., a concert by the school choir, gymnastic routines, shows by school bands);
- during school hours for teaching/learning (e.g., music/dance/dramatic arts classes); and
- before and after school, and during recess, if the use is for educational purposes (e.g., school radio operated by students for credit and supervised by a teacher).

The following uses of live and recorded music are not permitted by the *Copyright Act* and therefore require permission and payment:

- at school dances;
- at school sporting events;
- while people are on hold when they telephone the school;
- at an event where the admission fee is intended to make a profit; and
- on school premises for no other reason than as background music (e.g., in the classroom, cafeteria, halls, over the PA system, at school events such as fairs, carnivals, or sociocultural events).

SOCAN and Re:Sound can provide licences to schools and school boards across Canada. Applicable rates can be found on the SOCAN Web site at **www.socan.ca** and on the Re:Sound Web site at **www.resound.ca**.

The following uses of live and recorded music are not permitted by the *Copyright Act*, and SOCAN and Re:Sound cannot provide licences to schools and school boards for music used:

- in a play performed live (e.g., a drama class's production of *My Fair Lady*). In this case, the educational institution must obtain copyright authorization from a theatrical agent;
- in performances on school premises by outside performers (e.g., invited singers, magicians, etc.). In this case, obtaining copyright authorization is the responsibility of the outside performers; and
- in activities held in school facilities that are rented or are provided free of charge to outside groups. In this case, obtaining copyright authorization is the responsibility of the outside group.

The factors to consider when determining whether music use requires permission include:

- Did the music use occur during school hours?
- Will the student be graded on the activity involving the music use?
- Does the music use involve a demonstration by a student or teacher for other students, teachers, assessors, or parents?
- Is it reasonable to consider the music use to be for educational purposes? The phrase “educational purposes” is not defined in the *Copyright Act* but can be described as an activity that is planned and where the objective is for students to meet one or more subject or program outcome.
- Was the music used on school premises?
- If admission was controlled, was it free?
- Was the music use for a non-profit purpose?

If the answer to the majority of these questions is “yes,” then the performance of the music is most likely permitted by the *Copyright Act*.

15. Can students and teachers use copyright-protected works to create new works?



The *Copyright Act* contains a users' right permitting anyone, not just students and teachers, to use copyright-protected works to create new works. This users' right is referred to in the *Copyright Act* as "non-commercial user-generated content." This users' right can be found in section 29.21 of the *Copyright Act* as amended by the *Copyright Modernization Act*. The following conditions apply to the creation of non-commercial user-generated content:

1. It can be used for only non-commercial purposes.
2. The original source must be mentioned, if it is reasonable to do so.
3. The original work used to generate the content must have been acquired legally.
4. The resulting user-generated content does not have a "substantial adverse effect" on the market for the original work.

This users' right permits students to use copyright-protected works to create videos, DVDs, or mash-ups, as long as all four conditions above are met.

The users' right permits user-generated content created under provision of the *Copyright Act* to be disseminated. Dissemination includes uses such as posting a video to YouTube or a Web site.

16. Can teachers copy programs from radio or television?



Yes. An educational institution or a person acting under its authority may make a single copy of a radio or television program and show that copy provided the following four conditions are met:

1. The copy must be made at the time the program is aired by the broadcaster or communicated over the Internet.
2. The showing of the single copy must be for an audience consisting primarily of students.
3. The showing of the single copy must be for educational or training purposes.
4. The showing of the single copy must take place on the premises of the educational institution.

17. Can teachers show an audiovisual work (such as a DVD or video) on school premises without infringing copyright?



The *Copyright Act* permits showing an audiovisual work such as a DVD or video on the premises of an educational institution provided the following five conditions are met:

1. The showing must take place on the premises of an educational institution.
2. The showing must be for an audience consisting primarily of students, instructors, or persons directly responsible for setting a curriculum.
3. The showing must be for educational or training purposes.
4. The showing must not be for profit.
5. The copy shown must not be infringing or the person responsible for the performance has no reasonable grounds to believe that it is an infringing copy.

If all five conditions listed above are met, an audiovisual work may be shown for educational purposes without permission from the copyright owner and without the payment of royalties pursuant to section 29.5(d) of the *Copyright Act*.

Teachers can show audiovisual works purchased or rented from a retail store, a copy borrowed from the library, a copy borrowed from a friend, or a YouTube video.

Showing audiovisual works for non-educational purposes, such as fundraising or a family movie night, requires permission and the payment of copyright royalties.

Showing movies from subscription services in the classroom is governed by the terms of the agreement between the subscriber and the subscription service. If the agreement provides that use is limited to “personal” or “household” use, for example, then classroom use is not permitted.

18. Can teachers copy an audiovisual work at home and show it in the classroom?



No. Teachers cannot copy an audiovisual work at home and then show it in the classroom. Teachers can, however, show a legally obtained copy in the classroom. A legally obtained copy includes a copy purchased or rented from a retail store, a copy borrowed from the library, a copy borrowed from a friend, or a YouTube video.

19. Can lessons be streamed live to students or recorded and made available on-line for students at a time of their choosing?



Yes. Educational institutions can transmit lessons to students in real time over the Internet or make a recording of a lesson available on-line. For example, a student in one school is able to access an on-line course containing copyright-protected material offered in a different school. The student is permitted to make a copy of the lesson and keep the copy until 30 days after the final evaluation (final report card) is received. Both the student and the educational institution are required to destroy any recording of copyright-protected material contained in an on-line lesson within 30 days after the students who are enrolled in the course receive their final evaluations.

20. Can teachers copy computer software for educational use?



Owners of legal copies of computer programs may make a single reproduction of these programs in only two situations:

1. An owner of a legitimate copy of a computer program may make one backup copy of that program. The person must be able to prove that the backup copy is erased as soon as he or she ceases to be the owner of the copy of the computer program from which the backup was made.
2. An owner of a legitimate copy of a computer program may also make a single copy of that program by adapting, modifying, or converting the computer program or translating it into another computer language, provided that:
 - (i) the reproduction is essential for the compatibility of the program with a particular computer;
 - (ii) the reproduction is solely for the person's own use; and
 - (iii) the copy is erased when the person ceases to be the owner of the copy of the program from which the copy was made.

21. Can teachers and students copy from the Internet?



Yes. Educational institutions, teachers, and students may save, download, and share publicly available Internet materials, as well as use that material in the classroom and communicate it to students or others within their education circle.

“Publicly available” materials are those posted on-line by content creators and copyright owners without any technological protection measures, such as a password, encryption system, or similar technology intended to limit access or distribution, and without a clearly visible notice prohibiting educational use.

Routine classroom uses may be made of publicly available Internet materials, such as incorporating on-line text or images into homework assignments, performing music or plays on-line for peers, exchanging materials with teachers or peers, or reposting a work on a restricted-access course Web site.

To encourage copyright awareness and respect in all circumstances, students and educators are required to cite the source of the Internet materials they use.

22. Can teachers and students break digital locks to use copyright-protected materials they have the legal right to use?



No. A digital lock is a technological protection measure (such as encryption or a password) that restricts the ability of users of digital content from sharing or copying the content. The *Copyright Act* prohibits breaking a digital lock even for educational uses that are otherwise permitted by the *Copyright Act*. For example, the encryption on most commercial DVDs, or the serial-key validation required by many software programs, protects these DVDs and software programs from unauthorized use. These protections cannot be broken even if the purpose of the use is otherwise allowed.

23. Are student-created works protected by copyright?



Yes. Any original work created by a student — whether in the form of an essay, a video or DVD, a sound recording, Web site, or art work — is protected. The student — or if the student is a minor, the student's parent or legal guardian — must authorize the further use of a student's work, such as its use in a school publication, a teaching workshop, a student exemplar, or in a Web posting.

24. Where can I get more information on copyright?



Copyright can be, and often is, very complicated. This booklet provides the basics to point you in the right direction toward increasing your own copyright awareness. Exploring additional resources to obtain more in-depth information on the topics that are covered in this booklet will increase your knowledge. **Awareness of copyright is important because you are educating the copyright owners and users of tomorrow. More detailed information is available from the following sources:**

WEB SITES

The Council of Ministers of Education, Canada (CMEC) site contains an electronic version of *Copyright Matters!* and information about CMEC's copyright activities.

www.cmec.ca/139/Programs-and-initiatives/Copyright/Overview/index.html

The Canadian School Boards Association

www.cdnsba.org/resources/canadian-copyright-reform

The Canadian Teachers' Federation

www.ctf-fce.ca

The Department of Canadian Heritage site on copyright issues and developments

www.canada.ca/en/canadian-heritage.html

The 2Learn.ca Education Society's "Your Digital Presence" site. A useful site on obtaining copyright permissions, written from a teacher's perspective.

www.2learn.ca/ydp/copyrightabout.aspx

Canada's *Copyright Act*

www.laws-lois.justice.gc.ca/eng/acts/C-42/index.html

Canadian Intellectual Property Office. A guide to copyright basics

www.ic.gc.ca/eic/site/cipointernet-internetopic.nsf/eng/Home

TED: Ideas Worth Spreading. Thousands of free video lectures on a wide variety of subject matter that are usable by teachers in the classroom.

www.ted.com

Canadian Library Association. Copyright tools for librarians and educators

www.cla.ca/resources/copyright-information

Library and Archives Canada. A guide to citing copyright materials, tools for detecting plagiarism, and other copyright-related links for educators

www.collectionscanada.gc.ca/notices/016-200-e.html

Canadian Teacher Magazine. Links to freely available educational resources

www.canadianteachermagazine.com/freeresources.html

PRINT RESOURCES

Dryden, J. (2001). *Demystifying copyright: A researcher's guide to copyright in Canadian libraries and archives*. Ottawa: Canadian Library Association. ISBN: 0-0-88802-298-0, \$21.00.

Harris, E.L. (2012). *Canadian Copyright Law*, 4th ed. Hoboken, NJ: Wiley. ISBN-13: 978-1118078518, \$39.95.

Murray, L.J., & Trosow, S.E. (2013). *Canadian copyright: A citizen's guide*. Toronto: Between the Lines. ISBN-13: 978-1771130134, \$20.56.