

University of Saskatchewan Policy

Use of Materials Protected by Copyright

Category:

Number:

Responsibility:

Approval:

Date: Approved November 19, 2009 by University Council

Purpose:

To define acceptable use of materials protected by copyright (also referred to as “copyright materials”), to outline the responsibilities of all users of copyright materials in all media, and to establish a framework for responsible practice.

Scope of this Policy:

The use of material protected by copyright policy applies to all members of the university community including faculty, staff and students. This policy and federal legislation apply to all materials protected by copyright, including, but not limited to, published works, art, photographs, audio-visual materials, music, and software in all forms.

Related legislation, policies, regulations and collective agreements include the following:

- Copyright Act
- Computer Use Policy
- Electronic Mail (email) Policy
- Library Materials Policy (and associated procedures)
- Student Discipline and Appeals Policy
- Misconduct in Scholarly Work Policy
- Research Publications Policy
- Standard of Student Conduct in Non-Academic Matters
- Student Academic Dishonesty Rules
- Various license agreements including, but not limited to:
 - Access Copyright
 - Audio Cine
 - Criterion
 - library licenses
 - software licenses
 - independent license agreements

Copyright ownership of materials produced by members of the university community is a separate issue and is addressed in both legislation and various collective agreements.

Principles:

The university respects intellectual property and intellectual property laws.

The university respects the rights of copyright holders, their legitimate assertions of their rights and any rules that they articulate for the use of their material.

Faculty and students require access to instructional materials that exist in both electronic and more traditional, non-electronic formats, and material in electronic form is entitled to the same protection as material in more traditional, non-electronic forms.

The university has individual and collective responsibility to act responsibly in providing the materials that students and faculty require.

Definitions:

A *classroom* is any physical or virtual environment where access is normally restricted to class members or those granted access by the instructor. Certain exceptions to copyright legislation apply in the classroom.

A number of *exceptions* are built into federal legislation for the use of materials protected by copyright. In addition to fair dealing provisions, exceptions include, but are not limited to certain types of public performances, the reproduction of copyright material for the purposes of examination and testing, and the taping of certain radio and television program for educational purposes in classrooms and on the premises of educational institutions.

Fair dealing refers to the use of less than substantial passages and quotations from material protected by copyright for the purpose of private study, research, criticism, review and/or newspaper reporting.

University premises include any location, physical or virtual, where (and when) University of Saskatchewan instruction is delivered. University policies and practices govern behaviour on University premises.

Policy:

The University of Saskatchewan is committed to compliance in all copyright matters.

The university is granted permission to use certain copyright materials through various licensing agreements. The use of these materials is governed by the terms of the licensing agreement or other contracts between the university and the vendor/copyright holder.

It is the responsibility of each individual member of the university community to comply with copyright considerations. The university will provide advice and assistance.

Unless permitted by the terms of a specific licensing agreement or other contract, or an exception outlined in the Copyright Act applies, reproduction of copyright material, whether purchased, borrowed, rented or acquired for preview, in whole or in part, by any means necessary, is not allowed without the permission of the copyright holder. Electronic works have copyright protection that is identical to that of traditional, non-electronic works.

University-owned software refers to software product copies and licenses purchased by university funds or research grants administered by the university or software acquired by the university through some contractual agreement. "University-owned" does not imply copyright

ownership of a software product, but rather the right to use the software as prescribed by the license or other contractual agreement. The university does not permit the use of illegal software copies, or the illegal copying of computer software on university facilities and/or equipment. Unauthorized copying of computer software exposes the individual and the institution to legal action for copyright infringement or for breach of the license agreement.

Responsibilities:

All members of the university community have the responsibility to respect the rights of copyright owners, to make themselves aware of federal legislation and the exceptions outlined therein, and to take the steps necessary to ensure that their use of all copyright materials is compliant. The university has the responsibility to provide education and advice to all members of the university community on appropriate use, on the Copyright Act, and on exceptions.

All members of the university community have the responsibility to recognize the important distinction between materials that are publically accessible via the Internet or other electronic means, and works that can be freely used.

In addition to their personal responsibility for compliant use, faculty members also have a duty to inform their students of their responsibilities in their use of materials and advocate that students act with this responsibility in mind.

Deans, department/unit heads and research account holders are responsible for taking reasonable steps to ensure effective implementation of this policy and to encourage continued compliance with it.

The Copyright Coordinator and others who negotiate and handle licenses or contracts governing the use of copyright materials have the responsibility to make the terms of the agreements available on request to interested parties and to assist with compliant use.

The university has the responsibility to ensure the integrity of spaces where access is normally restricted, such as classrooms, both physical and virtual in nature, to ensure compliance with copyright agreements and legislation.

Non-compliance:

Non-compliance is a violation of federal legislation. In addition to any actions that might be taken by any copyright owner or licensing agent, the university will take action on any breaches of this policy.

If there is reason to suspect that university policies have been, or are being violated, or that continued access to and use of copyright materials poses a threat to the reputation of the university, the university will take action.

Following due process, the university may take action against anyone whose activities are in violation of this policy. The actions taken may include, but are not limited to:

- disciplinary action for employees
- disciplinary action for students under either Council Regulations on Academic Dishonesty or Senate Non-Academic Disciplinary regulations

- legal action that could result in criminal or civil proceedings.

Procedures:

Procedures concerning the use of copyright material, including the steps needed to clear copyright, are available from the Copyright Coordinator.

Contact:

Copyright Coordinator, Corporate Administration (966-8817)

Director, Corporate Administration (966-8781)

Website: http://www.usask.ca/corporate_admin/copyright/index.html

Guidelines:

To be developed by the Copyright Advisory Committee.

University of Saskatchewan

Guidelines for the Use of Materials Protected by Copyright

Prepared by the Copyright Advisory Committee

General Information about Copyright

Fair Dealing

Fair dealing is the use of less than substantial passages and quotations from material protected by copyright for the purpose of private study, research, criticism, review and/or newspaper reporting. The criteria below are proposed by the Supreme Court of Canada to help determine if dealing is fair:

1. The purpose of the dealing: Is it for research, private study, criticism, review or news reporting? The court expresses that "these allowable purposes should not be given a restrictive interpretation where this could result in the undue restriction of users' rights."
2. The character of the dealing: The court touches on two sub-criteria: the number of copies made and the existing custom and practice. Was a single copy made or were multiple copies made? Were copies distributed widely or to a limited group of people? Was the copy destroyed after its purpose was accomplished? What are the normal practices of the industry? "If multiple copies of works are being widely distributed, this will tend to be unfair. If, however, a single copy of a work is used for a specific legitimate purpose, then it may be easier to conclude that it was fair dealing."
3. The amount of the dealing: How much of the work was used? What was the importance of the infringed work? Quoting trivial amounts may alone sufficiently establish fair dealing. In some cases (for example, for private study) even using the entire work may be fair dealing if it is deemed necessary.
4. Alternatives to the dealing: Was a "non-copyrighted equivalent of the work" available to the user? For example, it is unfair to use a work if an equivalent non-copyrighted work would suffice. Could the work have been properly criticized without being copied? Was the dealing reasonably necessary to achieve the ultimate purpose?
5. Affect of the dealing on the work: Is it likely to affect the market of the original work? The work used must not compete with the original copyrighted work. For example, it will tend to be unfair to use a work if its market value will be adversely affected.

When in doubt as to whether or not your use constitutes fair dealing, seek permission of the copyright holder.

Public Domain

Regardless of where a work was created, it is protected by copyright in Canada for the life of the creator plus 50 years after the creator's death. After this period, a work enters the public domain and permission is not required to copy or distribute it. Although the "life plus 50" rule may seem straightforward, confusion results when a work is re-published. For example, Shakespeare's Hamlet in its original form remains in the public domain, but copyright to the version of Hamlet published by Penguin is held by that corporation. Numerous publishers may hold copyright for their versions of Hamlet, but none holds copyright to Hamlet itself.

The vast majority of works published in print and on the Web are not in the public domain. A work that is publicly available is not necessarily in the public domain.

For more information about fair dealing, the Copyright Act, and the public domain, please contact the Copyright Coordinator (966-8817)

Creative Commons

Creative Commons offers free licenses and other legal tools that can be used to designate the level of copyright protection that the creator of a creative work wants and makes it easier for others to share, remix, use the work commercially, or any combination thereof. Creative Commons licenses clearly state how you can use a work, and save you the potential hassle of seeking clearance or express permission from the copyright holder. For more information about Creative Commons and to search materials with CC licenses, visit <http://creativecommons.org/>.

You can also contact the Copyright Coordinator (966-8817) for more information.

Copying Print Materials

Access Copyright License for Works in Print Format

University community members may use some print copyrighted works based on the license agreement that the U of S has signed with Access Copyright.

The Access Copyright license provides permission to instructors, students and other University community members for incidental copying of some print works.

According to Access Copyright, University community members are allowed to photocopy, without seeking express permission, up to 10% of a published work or the following, whichever is greater:

- a complete essay, short story, play, or poem from a source containing other works
- a complete magazine, journal or newspaper article
- a complete entry from a dictionary, encyclopedia, or similar reference work
- a reproduction of an artistic work (such as a photograph, illustration or sculpture) from a source containing other works
- a single work of print music if it is from a source containing other kinds of works

- a complete chapter (provided the chapter does not make up more than 20% of the book).

Access Copyright's 10% rule means that copying more than one article from the same source is allowed as long as the copying remains within that percentage. The 10% amount is calculated per class per academic term or per academic year. Cumulative copying (copying up to 10% from a source one day, then more from the same source in the same term or year) is not allowed.

An instructor is allowed to make one copy of an allowable work for every student plus two copies for personal use. Access Copyright requires the following information on one page of all multiple copies:

- the copyright symbol ©
- the publisher
- the author/creator/artist
- the statement "This material has been copied under licence from Access Copyright. Resale or further copying of this material is strictly prohibited."

Additional fees are levied by Access Copyright for:

- copying print works for the production of coursepacks
- copying an out-of-print book in full.

Works **not covered** by the license include:

- a work not in print format (such as an e-article, a scanned print work, a CD or a video)
- a work never published (such as class notes, a diary, private letter)
- a thesis/dissertation/practicum
- a letter to the editor
- an advertisement
- a newsletter
- a consumable work (such as a published workbook, assignment sheet, test)
- a federal or provincial government document (excluding ones from Québec)
- an instruction manual (including a teacher's guide)
- sheet music
- an original artistic work (such as a photograph or print)

- many foreign publications (such as ones with which Access Copyright does not have a copyright license)
- a work with a notice excluding it from copying under a collective license
- a work on the Access Copyright Exclusions List. The exclusion list can be obtained from the Copyright Coordinator in Corporate Administration (966-8817)

Copying of material not covered by the Access Copyright agreement, or that exceed the limits set out by Access Copyright require special, express permission.

Please contact the Copyright Coordinator (966-8817) for help clearing copyright.

Access Copyright Coursepack copying

Printing Services helps instructors create coursepacks to supplement course reading material in a cost-effective manner while adhering to copyright law and the guidelines provided by Access Copyright.

For a coursepack, Access Copyright allows the copying of:

- up to 15% of a work or a complete poem, essay, article, play or short story
- a single work of print music if it is from a source containing other kinds of works
- a complete chapter (provided the chapter does not make up more than 20% of the book)
- a reproduction of an artistic work (such as a photograph, illustration or sculpture) from a source containing other works.

For content from textbooks for a coursepack, Access Copyright allows the copying of:

- no more than 5% or a complete chapter
- no more than two excerpts written by the same author and published by the same publisher within a five-year period
- no more than 50% of the total coursepack content from textbooks.

The Copyright Coordinator can provide help and advice concerning the use and reproduction of print materials.

Images/Photographs

Copying

Photographs are protected by copyright and require permission from the copyright owner to use.

Photographs, as well as tables, figures, maps, charts, diagrams, and images are considered a stand-alone or complete work even if it constitutes only a small portion of another work. Permission must be obtained to copy a complete or stand-alone work.

Displaying

A photograph or any other copyrighted image can be projected using an overhead projector or in a PowerPoint presentation as long as the work is presented at an educational institution and the work is not already available commercially in an appropriate format.

The image or photograph cannot be distributed as a handout and the presentation cannot be uploaded onto a course web site if it still contains the copyrighted materials. Specific permission must be sought from the copyright holder to post material online.

The Copyright Coordinator can provide help and advice concerning the use of copyrighted images.

Works of Art

Before using a work of art, it is important to determine who owns the copyright and who owns the physical property. For example, an art gallery may own a painting but unless the artist has assigned the copyright to the art gallery, the artist holds the copyright to that work. In this case, the art gallery controls the access rights only. Permission must be obtained from all copyright owners before using a work of art.

A slide or transparency of a reproduction of a work of art (such as a painting) can be made only if it is not commercially available in that format. Commercially produced slides and transparencies can be freely used in the classroom, but cannot be duplicated or transferred to another format without permission.

The Copyright Coordinator can be contacted with questions or concerns about using works of art.

Audio Recordings

Sound recordings such as cassettes, CDs or digital audio may be played in an educational institution without an additional public performance license provided the purpose is educational, the audience is primarily students and no profit is gained. The sound recording must be a legal, commercial copy. Live music may be performed without permission under these conditions as well.

You need to have permission to use a song that you do not own. The Canadian Musical Reproductions Rights Agency (CMRRA) can grant you a mechanical license that authorizes the reproduction of music on CDs. For reproductions of the musical work in audio-visual productions – films and video, they can grant you a synchronization license. For the public performance of music, The Society of Composers Authors and Music Publishers of Canada (SOCAN) will offer a license. Non-educational uses of music such as for concerts, dances, entertainment, ambience, music on hold for telephones, etc. require permission through SOCAN.

If in doubt, get permission before using music. Recorded music can have more than one copyright owner (for example, the composer, the performer, and the recording agency can all hold copyright in one song). Permission to copy may be required from all copyright owners.

Educational Media Access and Production (EMAP) can provide help and advice concerning the use of music and other audio recordings (966-4261).

DVDs/Videos/Films

A public performance license is required to show an audio-visual work in a public place such as a classroom or library, even if the purpose is educational. There is no educational exception in the *Copyright Act* for classroom use of films, videotapes, DVDs, etc.

EMAP has arranged ongoing license agreements with two companies that hold the majority of Public Performance Rights for feature films, Audio-Cine (ACF) and Criterion. Both companies require that the video/DVD be used on campus for educational purposes, and that the use be reported to EMAP. Licenses with both companies cover home-use video/DVDs and rentals from video stores and public libraries. If the film/DVD/video is not included under either license, a separate Public Performance License will be necessary.

Audio-visual materials from the National Film Board of Canada (NFB) can be shown in the classroom for educational purposes, as public performance rights are included in the price of NFB's institutional sales.

EMAP can provide help and advice concerning the use of DVDs, videos, films, and other audio-visual materials.

Digital Works

Everything on the Web is considered published and copyright-protected. Before using text, an image or an audio-visual work from a web site, remember that the same *Copyright Act* rules apply to a digital work as they do to a print work, including the fair dealing provision and the educational institutions exception. Our agreement with Access Copyright **does not** cover digital copying and distribution.

Permission is needed to use a digital work:

- to scan a printed work
- to upload a copyrighted work to a web site (including a course web site, even if the site is password-protected)
- to include a copyrighted work in presentation software such as PowerPoint that will be presented at a non-educational institution location (for example, at a conference site)
- for digital content with usage restrictions

If your use of digital works is not covered by fair dealing or educational exceptions, there are some other options for use. You can provide the URL of the electronic resource so that the reader is directed to the web site. Look for a section on the home page called "Copyright", "Permissions/Rights", "Terms and Conditions", "Legal Notices", "About Us", etc. to ensure that the site does not prohibit deep linking (placing a link at a point deeper than the home page). You may also seek permission of the copyright holder to use or link to their material.

Videos from websites

Before showing a web-based video or clip in a public place or a classroom verify the web site's policy or copyright statement that appears with the video. Many videos available from web sites, such as YouTube and the CBC, have usage restrictions.

"Streaming" video, whether to download on a portable media player or to be included in a web-based course, must have the permission of the copyright holder.

Live-streaming of video and audio content from the open web (not from a password protected site or a site to which access is restricted) in a classroom presentation is permissible, provided the content is not downloaded.

Questions about the use of materials from the Internet or in electronic form can be directed to the Copyright Coordinator.

Format Shifting

For Individuals with Perceptual Disabilities

Adaptation of a work for someone with a perceptual disability is allowed without permission unless the work is available commercially in an appropriate format. This Copyright Act exception does not apply to a cinematographic work such as a movie.

Because of Obsolete Technology

If the means to play a video or audio format no longer exists and there is no commercial copy available, a copy may be made to protect the original for preservation purposes. As long as you can purchase VHS players, VHS is a valid format. Therefore, you cannot transfer a VHS program to a DVD format without permission from the producer or distributor. Assuming the program has public performance rights, initially the producer issued the rights for the VHS "copy" not for the program. If you need the program in DVD format, you must purchase the DVD with public performance rights.

The Copyright Coordinator (966-8817) or EMAP (966-4261) can be contacted for help with format shifting.

Live Performance of Theatrical Work

A live performance of a play (a dramatic or literary work) is allowed without obtaining permission only if the play is shown on the premises of an educational institution, the audience is primarily students or instructors, the purpose is educational, and no profit is gained.

Television or Radio Programs

A radio or television program may be recorded off-air, for preview purposes only, provided it is kept no longer than 30 days. After 30 days, the copy must be destroyed. If the program is to be used in an educational setting or kept beyond the 30 day preview period, a tariff must be paid to the Educational Rights Collective of Canada (ERCC). Any recording is subject to record keeping provisions.

A radio or television news program or news commentary may be recorded off-air and used in an educational setting for up to one year. After one year, the copy must be destroyed or to use beyond the one year, a tariff must be paid to the Educational Rights

Collective of Canada (ERCC). A record must be kept of all recordings made from television or radio.

Televised Classes

Copyright material used in a televised class must be cleared for that specific purpose. Although these classes are password protected and have restricted access similar to the online classes, because it is a type of broadcast (narrowcast), the authorization must become specific for that purpose.

These Guidelines were developed by the Copyright Advisory Committee, who took the University of Manitoba's "UM Copyright Guidelines" webpage as a starting point (protected under CC BY-NC-SA). The Copyright Advisory Committee will be responsible for the periodic updating of these guidelines to ensure that they continue to reflect current best practices and current federal legislation. Any questions or concerns about the guidelines can be directed to the Copyright Coordinator (966-8817).