

Copyright at the University of Guelph: a guide for instructors

This guide deals specifically with copyright as it applies to the making of copies for instructional purposes. Whether photocopying a chapter to hand out to students in class, posting a journal article on CourseLink, or showing a video clip during a lecture, instructors need to ensure that their use of copyrighted works complies with Canadian copyright law and/or applicable license agreements.

This guide consists of two sections: the first provides background information on copyright and licensing requirements that govern copying at the University of Guelph, while the second section provides practical tips to assist instructors with making copyright-compliant copies for teaching purposes.

A. Before You Copy

In Canada, copyright protection exists automatically for every work that is created, and applies whether the copyright has been officially registered or not, and whether or not the work is marked with a copyright symbol. Copyright applies to all kinds of works, including (but not limited to) books, periodicals, computer software, films, images, audio recordings, TV shows, works of art, and websites. Copyright in Canada generally expires 50 years after the death of the author or creator, at which point the work enters the public domain.

Before making copies for instructional purposes, you will need to determine the following

- whether the content you are copying is protected by copyright
- whether the amount you are copying is substantial or not
- the origin or source of the material you wish to copy, and subsequently, whether its use is governed by an exception in the Copyright Act, or a license, contract, or terms of use
- whether the content you wish to copy is protected by a digital lock, or some other kind of technological protection measure

Permitted Copying

It is usually permissible to make a copy for instructional purposes as long as one of the following conditions is met:

- the copying is permitted under one of the exceptions in the Act, such as the fair dealing exception, or one of several educational exceptions
- the work being copied is in the public domain, i.e. it is no longer protected by copyright in Canada
- the work to be copied is covered by a license that permits such copying, such as a Creative Commons (CC) license, or a licence the university has negotiated with a publisher of electronic journals or books
- the amount being copied is insubstantial, both from a quantitative or qualitative perspective (for example, short quotations)
- the copyright owner has given permission for the copying

In other words, it is possible to make copies of copyright-protected works for educational purposes without obtaining the consent of the copyright owner, and without the payment of royalties, as long as the copying meets the requirements of one of the exceptions in the Copyright Act, or complies with the terms of a relevant license agreement. Otherwise, making the copies may be an infringement of copyright unless the permission of the copyright owner is obtained.

Note, however, that if the work to be copied is protected by a technological protection measure (digital lock) that restricts access to the work, the Copyright Act prohibits its removal, even if the making of the copy would otherwise be permitted. Removing a digital lock is considered an infringement.

It may be necessary to obtain permission from the copyright owner before making a copy from a work protected by a digital lock.

Canada's Copyright Act and the Fair Dealing Exception

The fair dealing exception in the Copyright Act permits copying, within limits, for the purposes of research, private study, education, parody or satire, as well as for criticism, review or news reporting, with appropriate attribution [29, 29.1 and 29.2].

As a guide to determining what may be legally copied under this exception, Universities Canada has developed a [Fair Dealing Policy for Universities](#), which reflects recent legislative changes as well as established best practices in the post-secondary sector.

Deciding whether making a copy meets the requirements for fair dealing involves a two-step test:

1. **Determining whether the copy is for one of the allowable fair dealing purposes outlined in the Act.**
The use of copyright protected works for educational purposes passes this test.
2. **Assessing whether the copying itself is fair, based on a six-factor test set out by the Supreme Court.**

The guidelines below, also outlined in the [Fair Dealing Policy for Universities](#), provide guidance in assessing the amount and type of copying that will meet the Supreme Court's criteria.

For additional information on the application of the fair dealing exception, try the [Fair Dealing Tool](#), which is a web based application created at the University of Guelph to assist instructors and students with determining whether their copying is fair dealing.

Guidelines for copying under the Fair Dealing Policy

Instructors may copy and communicate, in paper or electronic form, short excerpts of copyright-protected works, and may provide a copy 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 the institution
- c. as part of a course pack, provided certain conditions are met

The definition of a short excerpt is:

- up to 10% of a copyright-protected work (including a literary work, musical score, sound recording, and an audiovisual work)
- one chapter from a book
- a single article from a periodical
- an entire artistic work (including a painting, print, photograph, diagram, drawing, map, chart, and plan) from a copyright-protected work containing other artistic works
- an entire newspaper article or page
- an entire single poem or musical score from a copyright-protected work containing other poems or musical scores
- an entire entry from an encyclopedia, annotated bibliography, dictionary or similar reference work

Some important limitations:

- In each case, above, no more of the work can be copied than is required in order to achieve the allowable purpose.
- Copying or communicating short excerpts from a copyright-protected work under fair dealing 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.
- 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.
- Copying short excerpts for inclusion in print course packs is only permitted if the copies are made by University of Guelph staff, and no third party is involved in the production of the course pack.

Copying or communicating that exceeds the limits outlined above may be referred to Heather Martin, Copyright Officer, ext. 54701 or fairdealing@uoguelph.ca for evaluation. An assessment of whether the proposed copying or communication is permitted under fair dealing will be made, based on all relevant circumstances.

It is important to note that fair dealing is the “go to” exception in the Copyright Act and is available for anyone to use when making copies, provided that its legal requirements are met.

There is no need to look to other more specific exceptions in the Act if the copying in question meets the statutory requirements for fair dealing.

Other exceptions in the Copyright Act that enable copying for educational purposes

There are several additional exceptions in the Copyright Act that enable copying for educational purposes. Note that these exceptions are in addition to fair dealing, are more specific than fair dealing, and may have more restrictions or limitations than fair dealing. **It may be possible to use them in situations when fair dealing may not apply.**

Display for Educational Purposes: an exception that permits instructors to make copies for display to students in a classroom setting, provided the work being copied is not commercially available in an appropriate medium for the purpose [29.4 (1), (3)]. This exception was updated in 2012 to reflect current technologies, and now

allows for the reproduction and display of materials in any format. Note that this exception does not extend to displaying content within a course management system such as CourseLink.

Examinations: an exception permitting works to be copied or performed for use by students in a test or exam taking place on the premises of an educational institution. The work being copied must not be available for purchase in an appropriate medium for the purpose [29.4 (2), (3)].

Publicly Available Internet Materials: an exception permitting copies of publicly available internet content to be made and communicated to students for the purpose of education, provided the material contains no statement to the contrary and is not protected by a digital lock [30.04].

Performances: an exception permitting live performances, or the playing of a sound recording, film or video in the classroom, provided the work is not an infringing copy and is legally obtained [29.5].

Non-Commercial User Generated Content: (also known as the “mash-up” or “YouTube” exception) - an exception allowing individuals to copy published works in order to create new works for non-commercial purposes, subject to specific conditions [29.21].

Online Lessons: a provision that allows for copying for the purpose of distance education, but with significant restrictions, including the destruction of the lessons once the course is over [30.01].

News Broadcasts: an exception allowing a single copy of a news program or news commentary (excluding documentaries) to be made for the purpose of showing to students for educational purposes [29.6].

Perceptual Disabilities: a provision permitting copies of works, or sound recordings (but not film or video) to be made by, or on behalf of, a person with a perceptual disability [32].

B. Ready to Copy?

The following guide provides practical advice for ensuring that the use of copyrighted works in teaching complies with Canadian copyright law and/or applicable license agreements. Each section outlines the options available to instructors when making copies in print, electronic, and media formats for the purpose of sharing with or distributing to students in classes they teach at the University of Guelph.

Electronic Copies

Displaying electronic copies in class, or for tests and exams

Making copies to display in class or during tests or exams on the premises of the university, via a computer screen or any other device, is permitted as long as the works copied are not already available for purchase in a medium appropriate for the purpose. See also **Using Content from the Internet**, below.

Placing materials on electronic reserves.

Content from books, journals, multimedia and other resources may be placed on electronic reserves under the fair dealing exception in the Copyright Act, or linked to via library-licensed databases. Course Reserve staff will, when necessary, obtain permission from the copyright owner for any materials submitted, as well as pay any copyright fees. Course content may be submitted to [the Library's Course Reserve system](#), [Ares](#), and is easily integrated with CourseLink (D2L).

Posting scanned copies of books and other published works in CourseLink

Short excerpts (e.g. one chapter, one article, or less than 10%) from copyright-protected works may be posted on CourseLink for students under the fair dealing exception in the Copyright Act. For longer excerpts, permission from the copyright owner is required. Instructors are encouraged to submit all course content to the [Ares Course Reserves system](#), so that Course Reserves staff can obtain any copyright permissions that may be required, and also ensure that content meets current accessibility (AODA) requirements. All content submitted to Ares can be accessed via CourseLink (D2L).

Posting PDFs of e-journal articles or e-book chapters on CourseLink

Some of the library's e-journal content may be posted in PDF form to CourseLink (D2L), depending on the terms of the university's license with the publisher; check the journal's license terms via the Library's [E-Journals List](#) or contact Heather Martin, Copyright Officer, ext. 54701, e-mail: fairdealing@uoguelph.ca, for information about specific journal titles and license terms. Alternatively, link directly to e-journal or e-book content rather than downloading and posting the PDF, or submit your requests to [the Library's Course Reserve system, Ares](#).

Figures, illustrations, and images

Figures, illustrations, photographs and excerpts taken from textbooks, journals, or other published works, can be included in lecture notes displayed to students in a classroom setting. They may also be included in lecture notes posted on CourseLink, provided the amount copied does not exceed 10% of a single work. Figures and illustrations obtained from the Internet may also be displayed in class or posted online for students, subject to certain conditions (see [Using Content from the Internet](#), below).

Some of the library's e-journal licenses may also permit the posting of content in systems such as CourseLink. Check the journal's license terms via the Library's [E-Journals List](#) or contact Heather Martin, Copyright Officer, ext. 54701, e-mail: fairdealing@uoguelph.ca, for information about specific journal titles and license terms.

E-mailing e-journal articles to students or colleagues

Many of the library's e-journal licenses permit the e-mailing of pdf copies of articles to students and colleagues at your own institution. Some e-journal licences, however, do not permit the e-mailing of articles to colleagues at **other** institutions. If in doubt, send a link or citation to an e-journal article rather than sending a PDF copy. You may also e-mail fairdealing@uoguelph.ca for information about specific journal titles and license terms. Colleagues at other institutions may obtain the articles they require via Interlibrary Loan.

Using content from the Internet

Content on the web is copyrighted in the same way as print and other formats, even if there is no copyright symbol or notice. However, the Copyright Act permits the use of Internet materials for educational purposes, either under the fair dealing exception, or using a new provision that deals specifically with works available through the Internet. This provision permits the copying and communication of materials found on the Internet for the purpose of education or training, provided the source is cited, the original is not protected by a digital lock, the original is not an infringing copy, and that there is no clearly visible notice on the original prohibiting such use.

Also, linking directly to the web page containing the content you wish to use is almost always permissible, although you need to make sure the content you are linking to is not in itself infringing. If there are clues

that the web site contains content posted without the permission of the copyright owner, you should avoid linking to it.

Print Copies

Print course packs/course readers

Short excerpts (e.g. one chapter, one article, or less) of a copyright-protected work may be included in a course pack under the Fair Dealing Policy, provided certain conditions are met. The inclusion of the excerpt in a course pack must not substitute for the purchase of the original work, copies must be made by University of Guelph staff, no profit can be made, and no third party can be involved in the production and sale of the course pack. There are also record-keeping requirements, and specific notices that must be displayed on course packs containing materials copied under the Fair Dealing Policy.

If the excerpts to be included in a course pack cannot be covered under the Fair Dealing Policy, the permission of the copyright owner(s) will need to be obtained. Consult the [Fair Dealing Application Guide on Course Packs](#), or contact the Bookstore or the Open Learning and Educational Support (DE courses) for more information on the options available. Sufficient lead time will be required.

Classroom handouts

Photocopies that consist of short excerpts (e.g. one chapter, one article, or less than 10%) from copyright-protected works, may be provided to students under the fair dealing exception in the Copyright Act. For longer excerpts, permission may be required. Contact Heather Martin, Copyright Officer, ext. 54701, or e-mail fairdealing@uoguelph.ca for more information, or to obtain permission.

Print copies from e-journals and e-books : If the handouts are copied from one of the library's e-journals, or e-books, the license with the publisher usually permits copies to be distributed to students in print form. Contact Heather Martin, Copyright Officer, ext. 54701; e-mail: fairdealing@uoguelph.ca for more information on specific journal titles and license terms.

Print copies from the Internet: see **Copies Made from the Internet**, below.

Handouts for exams or tests

Copies made for use in examinations or tests do not require permission, provided that the original work is not commercially available in an appropriate medium for the purpose. Short excerpts of works may be used in any medium, as they are covered by the fair dealing exception.

Figures and illustrations

Figures, illustrations, photographs and excerpts copied from textbooks, journals, or other published works, can be included in classroom handouts and other print materials provided to students, using the fair dealing exception. When copied from e-journals or other licensed online content, use is governed by the journal's license terms; contact Heather Martin, Copyright Officer, ext. 54701; e-mail: fairdealing@uoguelph.ca for information about specific journal titles and license terms.

Print copies of figures and illustrations obtained from the Internet may also be provided to students, subject to certain conditions (see **Copies Made from the Internet**, below).

Copies Made from the Internet

The Copyright Act permits the use of Internet materials for educational purposes, either under the fair dealing exception, or using a new provision that deals specifically with works available through the Internet. This provision permits the copying of materials found on the Internet for the purpose of education or training, provided the source is cited, the original is not protected by a digital lock, the original is not an infringing copy, and that no clearly visible notice on the original prohibits such use.

Audio, Video, Film and Multimedia copies

Sound recordings

The exception for performances (Section 29.5 of the Copyright Act) permits the performance of sound recordings for educational purposes, on the premises of an academic institution. It is also possible using the fair dealing exception to copy short excerpts of sound recordings in order to post them on CourseLink or otherwise provide them to students for educational purposes. However, the Fair Dealing Policy does not apply if it is necessary to circumvent a digital lock in order to copy a short excerpt of a copyrighted sound recording.

Film and Video

With the enactment of the Copyright Modernization Act in 2012, performances of films and videos in class are now permitted without the need for a public performance license. However, the performance must be on the premises of the university, the audience must be primarily students, and the film or video used must not be an infringing copy. It is also possible to copy short excerpts of videos for other educational purposes, using the fair dealing exception, provided it is not necessary to circumvent a digital lock in order to do so.

News Broadcasts

The making of a single copy of a news program or news commentary (excluding documentaries) is permitted for the purpose of showing it to students for educational purposes, on the premises of the university.

TV and Radio Broadcasts

Single copies of a radio, television, or other broadcast may be kept for up to thirty days, for the purpose of deciding whether to show it to students for educational purposes, after which the copy must be destroyed if it is not used. If shown to students, records must be kept and royalties must be paid. Contact Heather Martin, Copyright Officer, ext. 54701 or e-mail fairdealing@uoguelph.ca for information.

Media Content on the Internet

A Copyright Act exception permitting educational use of publicly accessible Internet materials allows for the copying of works, including media works, that are available via the Internet, provided the source is cited, the original is not protected by a digital lock, the original is not an infringing copy, and that no clearly visible notice on the original prohibits such use. This exception enables the use of media content from the Internet in the classroom, as well as in CourseLink. An alternative is to link directly to media content on the Internet, such as a YouTube video, although it is important to ensure that the material you are linking to does not include infringing content. If there are indications that the content has been posted without the permission of the copyright owner, you should avoid linking to it.

In Summary: a quick checklist to use when copying for instructional purposes

- ✓ limit copying to short excerpts (e.g. one chapter, one article, or less than 10%) when copying for class handouts or posting on CourseLink
- ✓ utilize e-journal and e-book content that the university has already licensed. These resources can be linked to directly; e-mail fairdealing@uoguelph.ca to obtain stable links to specific content.
- ✓ copy materials from the Internet, provided there is no clearly visible notice prohibiting educational use, and the content is not protected by a digital lock
- ✓ copy materials for display in class, or for use in tests or exams, provided appropriate copies are not already commercially available.
- ✓ make use of public domain, Open Access or Creative Commons licensed content
- ✓ obtain permission when needed - send your request to fairdealing@uoguelph.ca, or place course materials on electronic reserve via the [Ares system](#). All e-reserve content is copyright cleared, and can be linked to via CourseLink (D2L).

Useful Contacts and Links

Questions regarding use of copyright-protected works, fair dealing, or obtaining copyright permission:

Heather Martin, Copyright Officer (fairdealing@uoguelph.ca; Ext. 54701)

Print and Electronic Reserves, Library:

Submit requests using the Ares Course Reserves System to ensure course content is copyright compliant and meets current accessibility standards: <https://ares.lib.uoguelph.ca/ares/>

E-Learning and Reserve Services (libres2@uoguelph.ca; Ext. 53621)

Heather Martin, Manager, E-Learning and Reserve Services, (martin@uoguelph.ca; Ext. 54701)

University Bookstore (Custom Courseware):

Ken Morrison, Bookstore Manager (Textbooks), (kmorrison@hrs.uoguelph.ca; Ext. 58468)

Custom Courseware Coordinator (bookstore@uoguelph.ca; Ext. 53584)

Open Learning and Educational Support (OpenEd):

Linda Tartt, Copyright Coordinator (ltartt@uoguelph.ca; Ext. 52943)

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