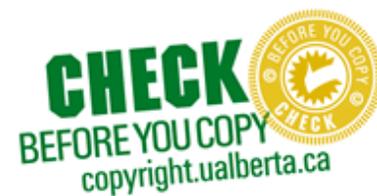


# Five-Step Analysis for Using Copyright Material



In general, reproducing a copyright work requires permission from the copyright owner, however in some cases, the right to reproduce and use a work already exists. The right to reproduce a work may exist under the terms of a licence, subscription, or other agreement. A review of the information in the following Steps 1 through 5 will help you understand when each category applies. In some cases, the right to copy may exist under multiple categories.

## Step #1: Is Use Outside the Scope of Copyright Protection?

The following are general rights and freedoms available to all. As these do not invoke copyright, no permission or payment is required.

### a) Facts and Ideas

Copyright subsists in any original work expressed by an author using their skill and judgment. The categories into which these works fall are literary, artistic, dramatic, or musical. Copyright does not extend to the facts, ideas, concepts, schemes, formulas, processes, or systems an author may have used when creating their work. Others may use the same factual information without infringing the author's copyright.

### b) Expired Copyright (Public Domain)

Copyright in a work expires with the passage of time. Once expired, the material becomes public domain and is no longer subject to copyright protection and may be used without permission or payment. For most categories of works, the general term of copyright in Canada is the life of the author, plus 50 years.

When reproducing public domain material, consider the work itself since it may contain new material that is subject to copyright. Examples include editorial comments, annotations, diagrams, explanatory glossary, etc. If the version you are working with contains value-added material, consider the work as in-copyright and proceed with the analysis. If a public domain work has been translated, the translated version is protected by a new copyright the duration of which is based on the life of the translator, plus an additional 50 years.

### c) Insubstantial Part

Copyright owners control use of all or any substantial part of their work; they do not control insubstantial use. Copying quantitatively and qualitatively insubstantial part of a work does not infringe copyright and no further analysis is necessary. Quantitatively, insubstantial may include a few lines or a couple of paragraphs, depending on the size of the document. Qualitatively, the excerpt selected must not represent the "essence" or "heart" of the work. This is a subjective assessment that can only be made in the context of a particular reproduction. When uncertain, continue with analysis.

### d) Hyperlinking

Providing a hyperlink from one internet location to another does not constitute reproduction of the work so there is no infringement of copyright. As a best practice, rather than reproducing and sharing content on the open web, consider providing a hyperlink so others access the work from its original location.

<b>STEP 1: Is Use Outside the Scope of Copyright Protection?</b>	
Yes	Permission is not required – proceed with use.
No	Advance to Step #2.

## Step #2: Was the Work Acquired by a Subscription or Site Licence?

Any time you log in to access content, whether you personally subscribed to a resource or were granted access, the terms of use for the subscription define your responsibilities. Content owners may wish to restrict distribution of their work to ensure use is limited to their fee paying clientele, or a specific group of users. Review the terms and conditions of the relevant agreement prior to sharing the material with others.

### a) UA Libraries Site Licences for Digital Collection (e-Journals, Databases, e-Books)

The UA Libraries has entered into numerous agreements with publishers and aggregators for access to published works in electronic form. The terms of use for these subscriptions and site-licences govern how the material may be used and by whom. These resources are available to authorized-users as well as walk-in library patrons. Distribution of any sort outside the institution is generally prohibited, except through interlibrary loan.

While some subscriptions allow for inclusion of resources in paper coursepacks, posting to a restricted access course website, and sharing with other authorized users, many do not. Due to the variability in licence terms, it is a best practice to provide other CCID holders with a persistent (static) link to the original source. For instructions on how to create a persistent link, see the UA Libraries.

### b) Personal Subscriptions and Restricted Access Collections

Content acquired via a personal subscription or accessed from a restricted-access source is usually intended for the subscriber's personal use. Review the terms and conditions of your subscription for information on sharing content with others. For digital subscriptions, these terms may be agreed to via a click-through agreement at the time you subscribed to the resource.

<b>STEP 2: Was the Work Acquired via Subscription or Site Licence?</b>	
Yes	Additional permission is not required. Review and abide by the relevant terms of use.
No	Advance to Step #3.

### Step #3: Does a Users' Exception under the *Copyright Act* Apply?

The *Copyright Act* provides for a number of exceptions that allow use of copyright materials for specific acts, purposes and user groups. These acts would normally be constitute copyright infringement if not for these exceptions. If use of a work falls within one of the following categories, permission or payment is not required.

#### a) Fair Dealing

Fair dealing is a statutory right that allows users to reproduce copyright protected works for specific purposes when doing so is fair. Any act falling within fair dealing will not be an infringement of copyright. When the fair dealing requirements are met there is no need to look further for more specific exceptions in the *Copyright Act* nor for any other permission.

##### i. FAIR DEALING ASSESSMENT BY INDIVIDUAL USERS

To qualify as fair dealing, two broad legal tests must be understood and applied. First, the dealing must be for an allowable purpose listed in the *Copyright Act*, those being: research or private study, education, criticism or review, parody and satire, or news reporting. When copying for criticism, review, parody, satire or news reporting, acknowledgement of the author and source of the work is required.

Second, the dealing must be fair in manner and amount. Fairness is established by consideration of the purpose, character, amount, alternatives, nature and effect of the dealing. Information on the analysis and these factors are available on the Copyright Office's website at <http://www.copyright.ualberta.ca>.

##### ii. FAIR DEALING BY UNIVERSITY EMPLOYEES

Due to the subjectivity of the legal test for fair dealing and to provide a standardized recommendation about what may be copied under this exception, the University has established quantitative guidelines for copying under fair dealing. As this is an internal institutional practice, copying under these guidelines does not apply for use outside the University.

#### b) Exceptions for Educational Institutions

In addition to the exceptions available to all users, the *Copyright Act* provides a number of specific exceptions for educational institutions. The exceptions for educational institutions relate to the educational context, including reproduction for instruction, reproduction for examinations, and performances held in public.

##### i. REPRODUCTION FOR INSTRUCTION

An instructor or other authorized person may reproduce a work for classroom display on the premises of the institution, for education or training purposes, as long as the displayed work is not disseminated in any form, such as a print handout or via posting to a LMS. An image may be projected in a classroom using an overhead projector or similar device (i.e. LCD projector) for the purposes of education or training on the premises of an educational institution. It is also permissible to make a manual reproduction of a work onto a dry-erase board, flip chart or other similar surface

##### ii. REPRODUCTION FOR EXAMINATIONS

It is permissible to reproduce, translate or perform in public on the premises of the educational institution, or communicate by telecommunication to the public situated on the premises of the educational institution, a work or other subject-matter as required for a test or examination.

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### iii. PERFORMANCES IN PUBLIC

It is permissible for a not-for-profit educational institution, on its premises before an audience consisting primarily of students of the educational institution, to:

- Stage the live performance in public, primarily by students of the educational institution, of a work such as a play, dance or musical;
- Play a sound recording, i.e. music CD, song or a dramatic recitation, audio books, language CDs;
- Show in public a work or other subject-matter such as a television show at the time of its broadcast; and
- Audiovisual Works (Movie, DVD, Video): An instructor may show students a cinematographic work, as long as the work is not an infringing copy or the person responsible for the performance has no reasonable grounds to believe that it is an infringing copy

*Limitation: Except in the case of manual reproduction, this exemption does not apply if the work or other subject matter is commercially available in a medium that is appropriate for the purpose.*

### iv. NEWS AND COMMENTARY

The *Copyright Act* contains certain additional time-limited exceptions allowing the copying and subsequent educational use of news reporting and news commentary broadcasts. Contact the Copyright Office for assistance.

### v. WORK AVAILABLE THROUGH THE INTERNET

Work available through the internet may be reproduced, posted to eClass and performed for UA students for educational or training purposes.

This exception applies to content posted on the open internet that was made available by the copyright owner without a digital lock restricting access and without a clearly visible notice prohibiting use. This exception does not apply where the University knows, or should have known, that the material was posted without the copyright owner's consent.

When using material under this exception, the following must be mentioned:

- (a) the source; and
- (b) if given in the source, the name of:
  - the author, in the case of a work,
  - the performer, in the case of a performer's performance,
  - the maker, in the case of a sound recording, and
  - the broadcaster, in the case of a communication signal.

## c) Persons with Perceptual Disabilities

Any University member with a perceptual disability, or any person who acts at their request, or any non-profit organization acting on their behalf, may:

- Make a copy or sound recording of a literary, musical, artistic or dramatic work, other than a cinematographic work, in a format specially designed for persons with a perceptual disability.
- Translate, adapt or reproduce in sign language a literary or dramatic work, other than a cinematographic work, in a format specially designed for persons with a perceptual disability; or
- Perform in public a literary or dramatic work, other than a cinematographic work, in sign language, either live or in a format specially designed for persons with a perceptual disability.

*Limitations:* This exception does not authorize the making of a large print book. As well, this exception does not apply where the work or sound recording is commercially available in a format specially designed to meet the needs of the individual. This exception does not extend to use of cinematographic works.

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**Non-Commercial User-Generated Content** Under this exception, it is not an infringement for an individual to use legally acquired copyright material for the production of original user-generated content for non-commercial purposes. The creator of the user generated content may authorize an intermediary to disseminate their new work as long as there is no substantial adverse effect on the market for the original work.

Examples include making a home video of a friend or family member dancing to a popular song and posting it online, or creating a "mash-up" of video clips and uploading to YouTube. Although copying under this exception does not infringe copyright, the creator of the original work retains their moral rights. Citing the original source(s) and author(s) is required only when it is reasonable to do so under the circumstances.

<b><i>STEP 3: Does a User Exception Apply?</i></b>	
Yes	Permission is not required. Review and abide by any conditions, limitations, or restrictions, etc.
No	Advance to Step #4.

## Step #4: Has the Copyright Owner Pre-Authorized Copying?

A copyright owner may agree in advance to allow copying of their work for specific purposes under certain terms, by one or more users. Pre-authorization to copy may require payment or may be provided without cost. The following are examples when permission to copy is pre-approved by the owner:

- a comprehensive licence negotiated to allow a group of authorized persons the right to copy a work in compliance with negotiated terms;
- a copyright permission notice on a verso page that applies to the entire publication;
- a copyright notice applied to each of the separate documents that comprise one publication; or
- the terms of use or legal notices for a website or digital publication.

Permission may be assigned by the owner directly or by an intermediary authorized by the owner to act on their behalf, such as a copyright collective society.

### a) Open Access Journals

Although an author may publish their scholarly research in an open access journal that has been made freely available for public access, the articles are still subject to copyright protection. Open Access publications often have favorable re-use terms that permit copying for non-profit educational use, however in some cases, each article within a journal may be separately licensed. Review the terms of use for each publication prior to copying and distributing articles. When in doubt, consider providing hyperlinks to refer others to the original source.

### b) Government of Canada Publications

Unless otherwise specified, advance permission to copy Government of Canada publications for personal or public non-commercial purposes is not required. The following conditions apply when copying for non-commercial use:

- Exercise due diligence in ensuring the accuracy of the materials reproduced
- Indicate both the complete title of the work reproduced, as well as the author organization
- Indicate that the reproduction is a copy of an official work that is published by the Government of Canada and that the reproduction has not been produced in affiliation with, or with the endorsement of the Government of Canada.

Permission is required when revising, adapting or translating a Government of Canada publication, or when reproducing the material for commercial purposes. See <http://publications.gc.ca/site/eng/ccl/index.html>.

### c) Reproduction of Federal Law

Anyone may, without charge or request for permission, reproduce enactments and consolidations of enactments of the Government of Canada, and decisions and reasons for decisions of federally-constituted courts and administrative tribunals, provided due diligence is exercised in ensuring the accuracy of the materials reproduced and the reproduction is not represented as an official version. See <http://laws-lois.justice.gc.ca/eng/regulations/SI-97-5/page-1.html>

### d) Creative Commons Licences

The Creative Commons copyright licenses and tools forge a balance inside the traditional “all rights reserved” setting that copyright law creates. These tools give copyright owners a simple, standardized way to grant copyright permissions to their creative work. As a result, a vast pool of digital content is made available for copying, distributing, editing, remixing and building upon, all within the boundaries of copyright law. See <http://creativecommons.org/licenses/>

<b>STEP 4: Has the Owner Pre-Authorized Reproduction of the Work?</b>	
Yes	No additional permission is required. Review and abide by the relevant terms and conditions.
No	Advance to Step #5.

## Step #5: Ask Permission

If reproducing a work is not available under Steps 1 through 4, permission from the copyright owner must be secured prior to using the work. Information on asking permission and clearing copyright, as well as clearance support services available to instructors is available on the Copyright Office's website at <http://www.copyright.ualberta.ca>.

If permission cannot be acquired or an owner denies the request, select an alternate resource. For assistance finding a suitable replacement, contact your liaison librarian.

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## Requirement for Citation and Notification

Acknowledgement of the author and publisher is required under most licences, direct permissions, or by law. Full academic citations and copyright notifications inform the recipient of the copy of the source of the material and of how it may be used.

### a) Academic Citation

Consistent with long-standing academic practice, attribution to the original author is necessary when reproducing the work of others. For information on academic citation styles contact the UA Libraries for assistance.

### b) Copyright Notice

Along with citation, additional copyright notification specific to copyright compliance may be required under an exception, the terms of a licence, a transactional permission, or copying guidelines. These notices indicate the authority under which the copy was made and inform the recipient of the terms. When course materials are sent to the Copyright Office for a copyright compliance review, office staff will ensure the appropriate notifications are affixed to documents.

## Questions?

Contact the Copyright Help Desk by email at [copyright@ualberta.ca](mailto:copyright@ualberta.ca)

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