

COPYRIGHT

Background

The Division acknowledges that it has a statutory and ethical responsibility to respect the claims of owners, publishers, and distributors of copyright-protected works. The Division also recognizes the need for students to have access to a wide range of resources to learn from diverse, multi-modal (print, visual, oral, digital) primary and secondary source materials. To determine whether and how certain materials may be used, copied, stored, and/or distributed in schools, the Division expects all staff to learn about and work within the limits of the *Copyright Act*, including the *Fair Dealing Guidelines*. These guidelines set out two tests that define whether and how to use copyright-protected works. The first test is whether the “dealing” is stated in the *Copyright Act*, and the second test is whether the proposed dealing is considered “fair” based on copyright law. In addition, the Division is committed to the principle of fair compensation of creators, publishers, and distributors of copy-righted works. Accordingly, there exists a need to apply such tests to clarify whether and how a copyright-protected work can be used, legally and ethically, in schools.

Definitions

1. *Copyright* means the legal protection of a creator’s original work (literary, artistic, audiovisual).
 - 1.1 Protection under copyright law is automatic in Canada. As soon as an original work has been written down, recorded or entered as a computer file, it is immediately copyright-protected.
 - 1.2 Protection refers to “intellectual property” rather than physical property (the ideas) rather than the form (e.g., poem, song, essay) or format (book, website, audio recording) that it takes.
 - 1.3 Copyright protection extends to subject matter such as performers’ performances, broadcast communication signals, and audio and visual recordings (e.g., streaming media).
2. *Copyright infringement* means publishing, adapting, exhibiting, translating, editing, performing in public, communicating by telecommunication, copying or converting to another medium without permission of the creator.
3. *Original works* covered by copyright include:
 - 3.1 Literary or Textual Works: books, pamphlets, poems, computer programs;
 - 3.2 Dramatic Works: films, videos, plays, screen plays, scripts;
 - 3.3 Musical Works: compositions consisting of words and music or music only (i.e., lyrics without music are literary works);

- 3.4 Artistic Works: paintings, drawings, maps, photographs, and sculptures;
 - 3.5 Architectural Works: blueprints, small scale replicas.
4. *Dubbed off air* means making a copy of any television program during broadcast.
 5. *Persons with perceptual disabilities* means persons who are legally blind or visually impaired and/or who have learning disabilities or physical disabilities that impact their abilities to read print materials.
 6. *Alternative formats of print materials* mean that print materials may be made available in an audio format (e.g., audiobook), in Braille, or as an e-text (digital version of the same text). An alternative format does not include a “large print book”; if there is a need to print the copyright-protected work as a large-print book, permission must be obtained from the copyright owner.
 7. Public domain resources mean works that are in the public domain may be reproduced without permission. Works become part of the public domain 50 years after the death of the creator except when the rights are passed to others.

Roles and Responsibilities

The Superintendent, through sharing this Administrative Procedure annually with school administrators, ensures that Division employees are aware of their roles and responsibilities, and procedures for enacting copyright laws and the principle of fair compensation of creators, publishers, distributors of copyright-protected works.

1. A principal’s responsibility is to:
 - 1.1 review copyright requirements as set out in this Administrative Procedure with staff at least once a year.
 - 1.2 post the Fair Dealing Guidelines poster and the poster prohibiting the copying of consumables near all school photocopiers, scanners, print stations, and other devices used to reproduce copyright-protected material.
 - 1.3 provide teachers and staff with copies of the Fair Dealing Guidelines, Copyright Matters!, and to share the website, www.copyrightdecisiontool.ca, which was created by the Council of Ministers of Education, Canada (CMEC) to help teachers decide whether an intended use of a copyright-protected work in the classroom is “fair dealing.”
 - 1.4 seek Division or ministry guidance when it is not clear whether copyright permission is required.
2. A teacher’s responsibility is to:
 - 2.1 set an example of respect for copyright laws for students.
 - 2.2 know and respect the limits of the *Fair Dealing Guidelines*.
 - 2.3 know their rights and obligations under copyright law (i.e., to have a working knowledge of the users’ rights as described in *Copyright Matters!*).

- 2.4 to refer to this administrative procedure and follow the process to seek advice and to obtain permission to copy, use, distribute, and/or store copyright-protected works.

Procedures

1. Short Excerpts

Division Employees may reproduce, in paper or electronic form, short excerpts of a copyright-protected work for private study, research, criticism, review, news reporting, education, satire, and parody.

- 1.1 When using a short excerpt of a copyright-protected work for educational use, cite the source, including the title of the work, the year it was published, and the name creator(s) of the work.
- 1.2 A short excerpt from a copyright-protected work may be provided to or be communicated to each student enrolled in a class in the form of a class handout or as a posting within a password-protected digital environment.
- 1.3 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**. Schools may copy more than 10% of an original work in special circumstances (See Section 8, Special Circumstances of this Administrative Procedure and consult *Copyright Matters, 3rd Edition* for more information about specific exceptions.).
- 1.4 Any fee charged 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 (paper, printing ink).
- 1.5 Division employees who seek to photocopy or make a digital copy of **more than a short excerpt of a copyright-protected work** shall obtain copyright permission in writing from the creator and/or publisher/distributor and keep it for reference for as long as the copyright-protected materials are in distribution.

2. Multiple Copies

- 2.1 If Division employees seek to make multiple photocopies of an item:
 - 2.1.1 Check the back of the title page in books and the table of contents page in magazines to determine what copying privileges the publisher may grant.
 - 2.1.2 Check the Canadian Copyright Agency (Access Copyright) to determine what is permitted or what is excluded.
 - 2.1.3 If the item is included in the exclusions list or is out-of-print, contact the copyright owner to obtain written permission to photocopy. Check with the copyright owner as to whether there will be royalty payment for making copies and the terms of distribution of those copies (e.g., whether only paper copies are to be distributed and then collected).

- 2.1.4 If permission to make multiple copies is granted, any fee charged to students for communicating or copying from a copyright-protected work must be intended to cover only the costs of the institution, including overhead costs (paper, printing ink).

3. Digital Resources

- 3.1 An audiovisual work may only be shown if the Division employee has a legally obtained copy of the work. A legally obtained copy includes a copy that was purchased or rented from a retail store or a web-based distributor, a public library, a copy borrowed from a friend, or a YouTube video. If a feature film specifies that it requires a site license, then the Division employee must contact the distributor to pay the site license fee and to obtain written permission to show the film.
- 3.2 A lesson can be shared in real time with students or copied and stored to share with students as part of an online course or classroom. The student is permitted to make a copy of the lesson and to keep it until 30 days after a final report card is received. Both the student and the educational institution are required to destroy the lesson copy at that time.
- 3.3 Software applications (web-based programs, games or applications stored online or offline) may only be used as specified in the license agreement.
- 3.4 The Division will make every effort to purchase multiple copies of electronic resources or site licenses for electronic resources. (One back-up copy, adaptation, or translation of a computer program is permitted by law and does not require special permission from the copyright owner; school librarians may lend the original program but not the back-up copy.)

4. Audio Resources

- 4.1 Audio recordings may be played in schools if the public performance rights were purchased. (Audio recordings obtained from Canadian distributors include performance rights in the purchase price).
- 4.2 Musical works may be performed in the course of teaching and learning without obtaining permission from the copyright owner.

5. Test Resources

- 5.1 A Division employee may copy, translate, communicate electronically, show, or play any copyright-protected work for a test or exam, provided the work is not already commercially available in an appropriate medium for the purpose of the test or exam. ¹

6. Resource Adaptations for Persons with a Perceptual Disability

- 6.1 A Division employee may make an alternative format copy of copyright-protected material (but not an audiovisual work) in a format designed for a person with a perceptual disability.

¹ For specific guidelines, refer to Copyright Matters 3rd Edition

- 6.2 A Division employee may provide a person with a perceptual disability with a translation, adaptation, or performance in public of the copyright-protected work as long as the work is not already commercially available in that format.²
- 6.3 A Division employee may not make a large print book for a student who has a perceptual disability without permission from the copyright owner(s).

7. Special Case Resources

The School Librarian, as directed by the School Principal, may make copy of a copyright-protected work:

- 7.1 for the purposes of cataloguing, internal record keeping, for insurance purposes, or police investigations;
- 7.2 for the purpose of restoration;
- 7.3 for an inter-library loan using digital technology to deliver the copy;
- 7.4 to replace a copy of a copyright-protected work that is not commercially available in a medium and of a quality that is appropriate:
 - 7.4.1 when the original work is rare or unpublished;
 - 7.4.2 when the original work is deteriorating or damaged, or lost;
 - 7.4.3 when the original work is too fragile;
 - 7.4.4 when the original work is in a medium that is obsolete.

8. Ownership of Copyright

- 8.1 Employees own the copyright on works they develop on their own initiative and on their own time even though the materials may be the result of ideas generated by the employee's work.
- 8.2 The Division owns the copyright on work developed by an employee on the Division's time or as part of his/her duties with the Board.
- 8.3 The Division may copyright any works produced at the direction of the Division.
- 8.4 The Superintendent may grant others the right to reproduce work copyrighted by the Division under such terms as may be appropriate. The reproduction must include the copyright and cite the title of the original work, the publication date and source, and the names of the creators.
 - 8.4.1 The Superintendent may enter into an agreement with others to produce, in part or in whole, a work for the Division. This agreement shall specifically address copyright of the work produced.
 - 8.4.2 The Division may market Board material at a cost that shall cover printing, mailing and royalty.
 - 8.4.3 The Division may enter into an agreement with a private publisher to publish Board material for sale and distribution.
 - 8.4.4 If the Division markets a resource profitably, it may compensate the creative employee.

² For specific guidelines, refer to Copyright Matters, 3rd Edition

- 8.5 Students own the copyright on anything that they create, and parental permission to reproduce their work should be obtained if the student is under 18 years of age. Student permission is required if the student is 18 years of age. Permission is not required to display student work within the school.
- 8.5.1 Each school will request and file permissions from parents/guardians at the beginning of each school year to record and/or tape their child(ren) for possible performance as part of the school registration form.
 - 8.5.2 Parental approval shall be obtained to share any student work outside the school at such sites as teachers' conventions, conferences, public libraries, Division office or shopping centers, or as part of public presentations. Parental or legal guardian approval will have parent/legal guardian signatures on a letter that indicates what kind of information will be obtained (i.e., art work, video clip) and where and when it will be shown, and for what purpose (i.e., to share classroom practices, to promote the school).
 - 8.5.3 The copyright in photographs taken by students for school publications with equipment and supplies provided by the school are usually the property of the school.
9. Each site-based administrator shall ensure that the Fair Dealing Guidelines poster is posted near all reproduction equipment (photocopiers, scanners, print stations, or other devices used to reproduce copyright-protected materials) are labeled with warnings that reproduction is not permitted without permission from the copyright owner.

Reference: Section 53, *Education Act*
Copyright Act
Copyright Matters!
Decision Tools
Fair Dealing Guidelines and Fair Dealing Guidelines Poster
Access Copyright

Revision Dates: March 19, 2018