

# Copyright Decision Map

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This Copyright Decision Map is designed to provide a simple 5-question guide to assist in making decisions regarding your rights and accountabilities concerning use of a particular work. The first two aid in determining whether copyright protection applies to the material at all. Questions three and four focus on ascertaining if authorization to reproduce the material pre-exists in some form. Question five centres on seeking clearance from the copyright holder when it is required.

***Each of them needs to be considered before you copy material for teaching and learning or research purposes.***

Western believes this decision map should provide a “safe harbour” for a considerable range of the copying that occurs in the teaching and research activities of our community. If you are still in doubt or have any questions please contact [copyright@uwo.ca](mailto:copyright@uwo.ca).

## 1. Is the material you wish to copy still protected by copyright?

The [Canadian Copyright Act](#) provides that copyright protection automatically exists in every original literary, dramatic, musical and artistic work when it is created. Protection lasts in most cases for the life of the author or creator and extends another 50 years after which the material is said to be in the “public domain”.

Copyright also subsists in certain “non-traditional” subject matter, such as performer’s performances, sound recordings, and broadcast signals, where the clock generally starts from the first performance of the work. Legislative amendments in 2015 increased the term of copyright in sound recordings and performers performances in sound recordings to 70 years following the first performance or recording release.

Much of the material that you will use in your research and teaching will fall under Canadian copyright protection.

See the [Term of Copyright \(Copyright Act s.6\)](#) and [Term of Rights – \(Copyright Act s.23\)](#) (sound recordings and performances) and Western’s [Term Protection Guidelines](#) for additional details.

## 2. Is the proposed use “substantial”?

Copyright only applies to the reproduction of the entire work “or a substantial part thereof” ([Copyright Act s.3](#)). Copying that is not substantial therefore does not require permission or payment of fees or royalties. Here is where it can get complicated since what is deemed “substantial” is not explicitly defined by the law but rather is a matter of degree and context.

Substantiality takes in considerations including what it is you are reproducing, how it relates to the original work, the amount you plan to copy and what you will do with it.

For the purposes of its 2015 [decision](#) regarding tariffs due to Access Copyright by the Provincial and Territorial Governments, the Copyright Board considered that 1-2 pages not to exceed about 2.5% of the whole work or about 1 page of a 40 page document, constitutes an insubstantial portion of a work. This can be used as a general amount guideline to determine “substantial” keeping in mind that more than the quantity reproduced should be considered.

For example the scholarly practice of citing a few sentences or even a few paragraphs in an article or essay, with attribution of course, would generally be considered insubstantial and not subject to copyright protection. On the other hand, reproducing a complete article from a journal or a few chapters from a book to use as supplementary reading for your class may be considered substantial and could be protected by copyright.

For more guidance on how to ascertain if the proposed copying is substantial, please refer to Western’s [Substantiality Guidelines](#).

### **3. Does permission exist in the form of a licence?**

Determine the use(s) articulated in any licence covering the material. If what you want to use is licensed, and the use that you propose is sanctioned by the licence (two separate questions) then you will be able to use the material without further permission or payment of fees or royalties.

For example, Western Libraries negotiates many digital licences and resource packages for the university community. Likewise some digital works carry a Creative Commons Licence or may be housed on an open access platform.

Open the following sections of this Copyright Decision Map or check Western’s [Licensed Use Guidelines](#) for additional information.

#### *a. Digital Licences*

Western Libraries has negotiated digital licences for the Western community for a large volume of online articles and e-books. Often these are bundles of resources that are licensed through consortial agreements with our colleague institutions. Acceptable use is indicated in the terms of each licence, and what is permitted may not be uniform across all subscription packages.

Use Western Libraries’ [Licensed Use Search tool](#) to find the licensed use for your particular electronic journal or e-book.

Select the appropriate search tab, either Journal or e-book, and enter the title of the journal (*not* the article) or the title of the e-book containing what you wish to copy. Next, you may have to select your title once more from an interim index in order to display the library catalogue record for the journal or e-book. The resulting displayed record provides the electronic holdings for your title.

It is often the case that specific journals or e-books are included in more than one subscription package each with different licensed use terms. If the title is available from multiple resource

packages you will see a list of the various sources for your title. Note too, that holdings and coverage dates for your specific title may also vary between particular journal packages.

Click the **Licensed Use** link beside the package that contains your e-book title or the required volume of your digital journal. The resulting table outlines uses permitted by this particular licence.

### *b. Creative Commons Licences*



Another simple check is to see if the work includes a Creative Commons Licence. With the increase in online publishing, Creative Commons is becoming an easy, intuitive and popular option available for authors to indicate the use they permit for their work. The presence of a Creative Commons licence also immediately alerts users of the work to the conditions for reproduction.

Creative Commons offers a selection of licence options in addition to the CC-BY version illustrated above, to offer creators varied levels of control over how they permit their work to be used. Each varies according to specific criteria creators place on their work, such as whether or not the work can be adapted or used commercially.

Visit <http://creativecommons.org/> for more information about Creative Commons Canada and to initiate the process of securing a licence for your own work.

### *c. Open Access*

A current trend for authors is to choose, or sometimes be required, to publish works in open access online publications or on platforms such as repositories that allow open access. Typically no restrictions are placed on access and in most cases re-use of material housed in an open access journal or on an open access platform. [Scholarship @ Western](#), our institutional repository is one example of an open access platform.

In 2015, the Tri-Agencies in Canada introduced a harmonized policy requiring open access dissemination of grant funded projects. The policy states that publicly funded research must be publicly accessible within 12 months of publication of the research findings.

Visit the Directory of Open Access Journals <http://doaj.org/> for more information.

## **4. Is the use allowed under a statutory exception?**

Look to the Copyright Act for a statutory exception permitting use. Several exceptions are included in the act in recognition that an equitable balance between the rights of creators and users is important. There is considerable scope for copying without the necessity of seeking the consent of the rights holder, provided by these exceptions in the Act and clarified by several Supreme Court decisions.

For Western three of these exceptions, the Fair Dealing Exception, the Educational Institutions Exception and the Personal Use Exception are of major importance. Open the following sections of this Copyright Decision Map for details concerning these three exceptions or consult the [Copyright Act](#) for more information and additional exceptions.

### *a. Fair Dealing Exception*

This is perhaps the most significant statutory exception, which in its 2004 CCH Canadian v. Law Society of Upper Canada ruling the Supreme Court has indicated is “always available” to users provided applicable requirements are met.

To fall within this exception two broad criteria must be addressed.

The dealing must be for an allowable purpose as stipulated in the *Act*; one of

- research
- private study
- education
- parody
- satire
- criticism
- review
- news reporting.

The dealing itself must also be “fair” as outlined in the 2004 Supreme Court CCH [ruling](#) and clarified by the 2015 Copyright Board [decision](#); having regard to:

- the goal of the dealing
- the character of the dealing
- the amount of the dealing
- the nature of the work
- available alternatives to the dealing
- the effect of the dealing on the work.

This is obviously a fact-specific, nuanced assessment.

See Western’s [Fair Dealing Analysis](#) to apply fair dealing to your particular circumstance and check our [Fair Dealing Exception Guidelines](#) for more information.

### *b. Education Institution Exception*

The Canadian Copyright Act recognizes that creating an engaging learning environment necessarily demands the use of information in order to be effective. Like the education purpose in the Fair Dealing exception, the Educational Institutions exception makes provision to copy and in some cases telecommunicate material for the purpose of education or training on the premises of the institution primarily for an audience of students. Additional restrictions may apply in some circumstances.

See the [Educational Institutions exception](#) of the Act as well as Western’s [Educational Exception Guidelines](#) for additional details.

### *c. Personal Use Exception*

Individuals in the course of conducting research have additional latitude built into the Copyright Act. Like the research and private study purpose in the Fair Dealing exception, the Reproductions for Private Purposes exception allows copying by individuals for their own use or translating a work into a different format. Additional restrictions such as using a non-infringing copy of the original and not circumventing any digital locks placed on the original in order to make the copy are required.

See the [Reproduction for Private Purposes exception](#) of the Act as well as Western's [Personal Use Exception Guidelines](#) for additional details.

## 5. Do you need to secure copyright clearance?

When all other options enabling the reproduction of a work have been exhausted, seeking clearance from the copyright holder is required and must be received before reproducing the material.

Before initiating a process to seek clearance, it might be useful to determine if there is an alternate way to make the material available without reproducing it, which will satisfy your purposes. For example, many resources available online through one of our library digital collections can be linked from your course syllabus or embedded in a lesson within OWL. Linking is always an option.

It is best to secure clearance in writing. Keep a copy for your own records and indicate on the copy you make once cleared, that it is used with permission. Fees or tariffs or royalties might be required and it always adds time to the process, as much as an additional 6 to 8 weeks or more.

Sometimes clearance is not granted or cannot be secured in a timely fashion and choosing an alternative resource will be required.

The Book Store at Western is also available to assist with securing copyright clearance. Contact [copyrightclearance@uwo.ca](mailto:copyrightclearance@uwo.ca) for specific help and consult Western's [Seeking Clearance Guidelines](#) for more information.



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Created 12/01/2013  
Updated 09/09/2015

Adapted with permission from the University of Toronto's [Copyright Roadmap](#)