

# Educational Institutions Exception Guidelines

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This exception in *Copyright Act* outlines the circumstances and conditions when educational institutions may use copyright protected works without seeking clearance.

These Guidelines provide detail concerning this exception and give additional background to the 4<sup>th</sup> question in Western's [Copyright Decision Map](#). Remember that other statutory exceptions or conditions outlined in the Map may apply to your situation.

## Background

Educational institutions are given additional latitude for copying provided certain conditions are met. [Sections 29.4 to 30.04](#) of the Copyright Act outline several circumstances or situations related to educational institutions where copying may occur, as well as the additional requirements or conditions that must be satisfied in order to do so. Provided required conditions are met, the exception grants an educational institution or a person acting under its authority sanction to reproduce a work without the need to seek clearance or pay fees.

Circumstances articulated in the *Act* include such things as:

- displaying – for example, reproducing on a whiteboard or including in a PowerPoint presentation
- performing – such as playing a sound recording or showing a film or video in class or
- telecommunicating – for instance using OWL, Western's learning management .

Often the same work can have multiple circumstances applied to it. For example, conditions will apply to the actual reproduction of a work and subsequently the same or different conditions may apply to what you do with it. For example, you might copy and perform it, or copy and telecommunicate it. So it is important to consider in advance all the various ways you plan to deal with the copy of a work.

The related conditions vary slightly, usually contingent on the particular circumstance and may apply to the actual work as well as what you do with it. Conditions often include provisions such as, "on the premises of an educational institution for educational or training purposes and not for profit, before an audience consisting primarily of students of the educational institution" (s.29.5) or "before an audience consisting primarily of students of the educational institution on its premises for educational or training purposes" (s. 29.6 b).

## **Education Institutions Exception Guidelines**

Some of the most common situations cited in the Educational Institutions Exception that apply to us are described in the following sections of this Guideline. Check the *Copyright Act* beginning at [Section 29.4](#) for complete details of all the Educational Institutions exceptions.

### *1. Reproduction for Instruction or for Examinations etc.*

Copying a work to display in class on campus or to include in a print or electronic version of a test or exam, for Western students is typically fine. The caveat in these cases, except when you manually reproduce the work – for instance drawing it on a whiteboard which can be done without restriction - is that a commercially available equivalent is not for sale or acquisition by licence in Canada, both at a reasonable cost and found with reasonable effort.

So for example, you typically may copy an image into the presentation you use in class or reproduce a poem for a quiz in OWL.

### *2. Performances*

Playing background music as students enter the classroom, showing a video in class or in a free public lecture on campus, and the live public presentation of a work are all considered “performances” in the *Act*. Instructors, faculty or anyone responsible for setting curriculum at Western may perform a work provided it is:

- on University premises
- for educational or training purposes,
- at a not-for-profit event
- before a Western audience or one composed primarily of members of the Western community.

In the case of sound recordings and cinematographic works an additional condition is that the performance is not reproduced from an infringing copy of the work.

### *3. News and Commentary*

For the reproduction of a news or commentary program, the *Act* separates the reproduction and how it will be used. This section also excludes documentary programs.

As members of the Western community we may reproduce a single copy of a news or news commentary program only in order to perform it. So copying for the purpose of playing in class is fine. Reproducing to distribute in class or sell it is not.

The actual performance carries several conditions with it. They include the stipulation that it is for educational or training purposes and that the actual performance is on campus and before an audience consisting primarily of Western students.

### *4. Reproduction of Broadcasts*

The *Act* permits reproducing a single copy of a work that originally was publicly broadcast, and keeping the copy for up to thirty (30) days to decide whether to perform the copy for educational or training purposes.

After 30 days, either the copy must be destroyed or any required royalties or fees paid and the necessary records kept. If it is performed, it must be in accordance with additional conditions sanctioning the use of the broadcast, such as the Fair Dealing exception or other licensing restrictions.

### *5. Reproduction for Lessons by Telecommunication*

This section (30.01) essentially equates students accessing courses via a learning management system like OWL with students taking courses in a physical classroom on campus. The *Act* is clear that this portion of the Education exception does not override seeking and receiving the consent of copyright holders when it is necessary. Nor does it allow posting an infringing copy to OWL. Rather it extends the conditions sanctioning copying on campus, that it is for an audience primarily of students enrolled at the university for educational or training purposes, to material uploaded to the institution's learning management system.

Remember that the Fair Dealing exception also includes education as a purpose in its application so the conditions included in it may be employed to determine your user rights. See Western's [Fair Dealing Exception Guidelines](#) for additional details.

Students may make a personal copy of the lesson for later viewing. Neither the OWL copy nor reproductions made by students for personal convenience can be sold or distributed more widely than to the class.

More specific conditions do apply to this exception. Perhaps the most important for us is that the copies made, both the 'fixation' uploaded by the institution or persons acting under its authority - which includes faculty and staff – as well as the student's copy, must be destroyed within 30 days following the delivery and receipt of final grades for the course. In addition the institution must take reasonable measures to limit the audience to students and prevent the students from reproducing the material for reasons other than to view later.

For us, posting copyright protected material in OWL is our most efficient and recommended way of making it available to a class, since access to it is restricted to authorized members of the Western community. The Education exception however is not carte blanche to upload anything into the learning management system. Infringing copies are still infringing copies and if copyright clearance is required it still must be secured.

### *6. Work available through Internet*

We also may use material on the Internet for educational or training purposes. The *Act* stipulates that we can copy it and perform it in class or telecommunicate it via OWL, for an audience that consists primarily of Western students provided that the source and creator

are cited. Of course attribution is always necessary for us at Western both for academic integrity reasons and to satisfy any required copyright conditions.

The caveats here are that any technological protection measure (TPM) or digital lock attached to the work cannot be circumvented in order to make the reproduction. Also no clear notice or marking, other than a copyright symbol, that would prohibit copying is present on the page or the website containing it. We also must be reasonably sure that the site containing the work copied did so legally and with the copyright owner's consent if necessary.

The Educational Institutions Exception is only one of several statutory exceptions contained in the Canadian *Copyright Act*. Other exceptions or conditions outlined in Western's [Copyright Decision Map](#) may apply to your situation.

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