

Substantiality Guidelines

When you plan to use a work in its entirety, you definitely will need to consider copyright. However when you want to use part of a work, copyright applies only if the amount is substantial. Substantiality is a second foundational concept in determining when a portion of a work is copyright protected.

These Guidelines expand the concept of substantiality, give additional background to the 2nd question in [Western's Copyright Decision Map](#), and give some examples of the kinds and levels of copying when considering what constitutes a substantial part of a work.

Background

The Canadian Copyright Act ([section. 3](#)) grants the creator of a work the “sole right to produce or reproduce the work or any substantial part thereof in any material form whatever”. Users therefore have the right to copy *insubstantial* portions of copyright protected works without seeking clearance, paying fees, or looking further to other means in order to copy. Insubstantial amounts do not fall under copyright protection at all.

However, the Act does not precisely define substantial. There is no threshold that serves as a universal tipping point triggering the presence of copyright protection in portions of a work. Determining substantiality is a nuanced question involving both quantitative and qualitative aspects in analysing the material you wish to copy in relation to the work from which it was taken.

Case law applying the Act can assist in clarifying ‘substantiality’. Specifically in the [Warman v. Fournier](#), 2012 s.23 ruling the Federal Court offered the following five considerations to assist in determining what constitutes substantial:

Whether a substantial part of a work has been reproduced is a question of fact and involves a qualitative as well as quantitative analysis. The relevant factors to be considered include:

1. the quality and quantity of the material taken;
2. the extent to which the respondent’s use adversely affects the applicant’s activities and diminishes the value of the applicant’s copyright;
3. whether the material taken is the proper subject-matter of a copyright;
4. whether the respondent intentionally appropriated the applicant’s work to save time and effort; and
5. whether the material taken is used in the same or a similar fashion as the applicant’s: *U & R Tax Services Ltd v H & R Block Canada Inc*, [1995] FCJ No 962, at para 35.

In May 2015, The Copyright Board of Canada also provided additional clarity surrounding substantiality, in its [Statement of Royalties to be Collected by Access Copyright for the Reprographic Reproduction, in Canada, of Works in Its Repertoire \[Provincial and Territorial Governments – 2005-2014\]](#). As part of its detailed deliberations regarding the tariff amount payable to Access by the Governments, the Copyright Board gave careful consideration to what constitutes a substantial portion of a work. The Board’s discussion of substantiality forms part X-B of the decision.

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For the purposes of its 2015 [decision](#), 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 quantitative guideline to determine “substantial” keeping in mind that more than the amount reproduced should be considered.

Look at the amount certainly, but also ask questions like:

- Am I using only what need in order to serve my purpose or make the argument or give context?
- Can I make the point using something that I have created?
- Will the creator’s copyrights be adversely affected by my use of this portion of the work?

Depending on the context, copying a few sentences or a few paragraphs or even more may not constitute a “substantial” portion of the work. Typically quotations from an article included in a paper or on a presentation slide will be insubstantial and not protected by copyright.

If the amount you are using is not substantial you don’t need to look to other factors to enable your dealing (e.g., the existence of a University license or a statutory exception) nor seek permission and pay any required fee.

Attribution is always necessary when you use the work of another in your research, teaching and learning, both from a copyright perspective, and to comply with University policy on plagiarism.

Substantiality is one of several conditions affecting use of a work. In addition, the Canadian *Copyright Act* provides several statutory exceptions outlining specific circumstances and conditions when works may be reproduced without seeking clearance Other exceptions or conditions outlined in [Western’s Copyright Decision Map](#) may apply to your situation.

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