

# Copyright Guidelines and Flowchart

## Introduction

Laurentian University and its faculty, staff and students are both creators and consumers of intellectual property. We are legally (and morally) obligated to respect the intellectual property right of others, just as we expect others to respect our intellectual property rights. These rights are protected under the Copyright Act of Canada.

You are required to comply with copyright law and the Laurentian University copyright requirements. This document supplements the [Laurentian University Copyright Requirements for Faculty and Staff](#) and provides a basic summary of copyright law and guidance on what you can and cannot do with copyrighted works.

If you have any questions or concerns about your obligations of these guidelines please contact [copyright@laurentian.ca](mailto:copyright@laurentian.ca)

## Your Copyright Obligations

Copyright is the sole and exclusive right of a copyright owner to produce, reproduce, perform, publish, adapt, translate and telecommunicate a work, and to control the circumstances in which others may do any of these things.

Copyright law in Canada protects a wide range of works (See Step 1). If you wish to reproduce a substantial part of a copyrighted work, you may only copy the work if you have permission from the copyright holder or if your copying falls within one of the exceptions set out in the **Copyright Act** C-42, that allows for such copying. The *Copyright Act* allows such exceptions for certain users. These exceptions provide a balance between providing copyright owners with legal rights to control use of their works, and allowing users to access those works.

In November 2012, Bill C-11, The Copyright Modernization Act was brought into force. The changes significantly update the *Copyright Act*, expand various educational exceptions available to Laurentian University, and provide greater flexibility for faculty and staff to rely on these exceptions to reproduce works within the university environment.

## **Steps to Determine Your Ability to Copy**

The following sets out a step-by-step process that guides you through the questions you need to answer to determine your ability to copy specific works.

### **Step 1. Is the work protected by copyright?**

All original literary, dramatic, musical and artistic work, computer programs, translations and compilations of works are protected by copyright, unless the author(s) of the work died more than 50 years ago (and note that translations and annotations of such works are also copyrighted). If in doubt, you should presume that the work is protected by copyright.

### **Step 2. Is there a Digital Lock protecting the work?**

A technology protection measure (commonly referred to as a TPM or Digital Lock) is any technology, device or component that controls or restricts the access to or copying of a work that is installed on the work, including technical barriers like passwords that prevent or restrict access to a work. The *Copyright Act* prohibits the circumvention of Digital Locks, unless it is done with the authority of the copyright owner. If you have obtained a password or key via unauthorized means, e.g. found the solution to breaking a digital lock published on-line, without consent from the copyright owner, then you cannot circumvent the Digital Lock to access the work. It is important to note that even if you may otherwise have been able to reproduce a work under one of the exceptions within the *Copyright Act* (including education exceptions and fair dealing exceptions), if there is a Digital Lock on the work, you must not circumvent the Digital Lock to access the work, unless you are authorized by the copyright owner to do so.

The Digital Lock provisions of the *Copyright Act* are new and subject to interpretation, so there is still room for more legislative reform and consideration by the courts to address numerous questions and issues raised by these requirements.

### **Step 3. Does Laurentian University have an existing licence, which allows you to link, copy or upload a work?**

Laurentian University has licensed in excess of 60 000 digital journals and over 1 million e-books for use by its faculty, staff and students. License agreements typically include the ability to link to articles and chapters and frequently include the right to upload or make print copies. Details regarding the terms and conditions of these licenses are available under the e-journals listing. Further assistance can be obtained from your subject librarian or by emailing [copyright@laurentian.ca](mailto:copyright@laurentian.ca).

### **Step 4. Is copying of the work permitted under the Copyright Act?**

The exceptions in the *Copyright Act* are a means of balancing the rights of the copyright holder with the rights of copyright users. Under certain exceptions, things can be done by educational

institutions, or persons acting under the authority of an educational institution, that would otherwise infringe copyright. The “fair dealing exception” is one such exception.

### **Step 5. Do you wish to request permission from the copyright holder?**

Before deciding to seek permission to copy, you should always consider whether another choice of material, for which the university already has a license, would be an acceptable alternative.

If the copying of a work is not permitted through any of the above means and you still wish to use the work, you must seek to obtain the express permission of the copyright owner. These permissions need to be sought on a case by case basis, and there is no obligation for the copyright owner to grant your request. If the copyright owner agrees to your request, the permission to copy the work will generally come by way of a one-off transaction license agreement between Laurentian University and the copyright owner for this one request.

### **Conclusion**

This document is an overview and not a comprehensive summary of the copyright laws of Canada. Please note that there are additional exceptions available to libraries (including university libraries) under the *Copyright Act*. Future court decisions and amendments to legislation will affect the scope of these exceptions. Laurentian University may revise and update this information from time to time as required by changes to the law and court decisions.

## **A. The Fair Dealing Exception**

The “**Fair Dealing Exception**” allows any person to use a copyrighted work for the allowable purposes of research, private study, education, satire, parody, criticism, review or news reporting without the copyright holder’s permission. To qualify for the Fair Dealing Exception, two tests must be passed.

First the “dealing” must be for an allowable purpose stated in the *Copyright Act*: research, private study, education, satire, parody, criticism, review or news reporting.

The second test is that the dealing must be “fair.” In landmark decisions in 2004 and in 2012, the Supreme Court of Canada provided guidance as to what this test means. In its 2012 decision, the Supreme Court of Canada considered copying of short excerpts by faculty for class handouts under the “research and private study”, that faculty cannot “be characterized as having the completely separate purpose of ‘instruction’”, and that the professors purpose in providing copies to students is “to enable the students to have the material they need for the purpose of studying.” The Court characterized professors as sharing a “symbiotic purpose with the student/user who is engaging in research or private study.” On this basis, the Court decided that the Fair Dealing Exception allows professors to make copies of short excerpts of copyrighted

works and distribute them to students as part of classroom instruction, without a prior request from a student, subject to appropriate conditions. [See **AUCC Fairdealing Guidelines for further details**]

## **Fair Dealing Flowchart**

It can often be tricky to determine whether something you want to do falls within fair dealing. This quick guide sets out the steps you should take and the factors you should consider. Ultimately, it will depend on your particular circumstances and you have to make a judgment call as to whether your use can be classified as “fair”. If you have any doubt, you should ask for permission.

### **Part A: Check whether your purpose is a permitted purpose**

Are you using the work for the purpose of:

- |                  |                   |
|------------------|-------------------|
| a. Research      | e. News reporting |
| b. Private study | f. Education      |
| c. Criticism     | g. Satire         |
| d. Review        | h. Parody         |


YES → Continue to Step 2

NO → Check whether use is covered under:

- a. Any other *Copyright Act* exception
- b. Library licenses for electronic journals and databases
- c. Cinematograph film licenses
- d. Any other agreement

## Part B: Check whether your use is “Fair”

Is the nature of the dealing fair?

Nature of the Dealing	Less Fair	More Fair
		
<b>Purpose</b>	Commercial	Charitable/Educational
<b>Character of the dealing</b>	Multiple copies	Single copy
	Widely distributed/repetitive	Limited distribution/one-off
<b>Importance/ amount of work copied</b>	Entire Work/ Significant excerpt	Limited/ trivial amount
<b>Effect of dealing on the original work</b>	Competing with original work	Not detrimental to original
<b>Nature of the work</b>	Confidential/ unpublished	Published / in public Interest
<b>Available alternatives</b>	Non-copyright works available	No alternative works
	Not necessary for purpose	Necessary to achieve purpose

There are also the following “personal use” fair dealing exceptions:

### Non-commercial User-generated Content (aka mash-up exception’)

- An individual may, for non-commercial purposes, use a published work to create a new work provided that the individual had reasonable grounds to believe that the published work used did not infringe copyright, the individual mentions the source of the published work and the use of such published does not have a substantial negative effect to the copyright holder of the published work. For example, this allows you to splice scenes from legally purchased movies or videos, for the purposes of creating a lecture.

### **Reproduction for Private Purpose (aka ‘form-shifting exception’)**

- An individual may reproduce, for a private purpose, any work, if the source copy was legally obtained and the individual does not circumvent an access Digital Lock (see above) in order to reproduce the work. For example, this allows you to copy a song purchased from iTunes from your computer onto a device, such as an iPod, or files from a legally purchased CD to your computer.

This exception does not allow you to:

- copy songs onto a CD or mini-disc (or any other audio recording medium);
- give the reproduction away; or
- keep the reproduction if the original version is given away, rented or sold.

### **Fixing Signals and Recording Programs for Later Listening/Viewing (aka ‘time-shifting exception’)**

- An individual can fix a communication signal or copy a work, sound recording or performance being broadcast for the purpose of privately viewing it at a later time, provided that the signal is received legally, the individual does not circumvent an access Digital Lock in order to fix the signal or copy the work, only one recording is made and such recording is not given away. For example, this allows you to record a show on your PVR or other recording device to watch at a later time.

### **Backup Copies**

- An individual can make a backup copy of a work to protect against the source copy being lost, damaged or otherwise rendered unusable, if the source work is legally obtained by the individual, the individual does not circumvent an access Digital Lock in order to back-up the work, and backup copy is not given away.

## **C. Other Educational Exceptions under the *Copyright Act*:**

Education institutions, or persons acting under the authority of any educational institution, are also allowed to do any of the following:

### **Reproduction of Canadian Legislation**

- Reproduce enactments, consolidations of enactments of the Government of Canada, decisions and reasons for decisions of federally-constituted courts and administrative tribunals, provided due diligence is exercised in ensuring the accuracy of the reproduced materials and the reproduction is not represented as an official version;

### **Reproduction for display**

- Reproduce a work, or do any other necessary act, in order to display the work for education or training purposes. However, this exception is not available, except in the case of manual reproduction (e.g. onto a dry-erase board, flip chart or other surface intended for displaying handwritten material) for works that may be located with reasonable effort, are commercially available on the Canadian market within a reasonable time and for a reasonable price, in a medium appropriate for education or training purposes;

### **Reproduction for tests or exams**

- Reproduce, translate or perform a work in public, and/or
- Communicate a work by telecommunication to the public, provided:
  - the actions are done on the premises of the university;
  - the actions are done as required for a test or examination, and
  - that the work is not already available in a commercial format.

### **Performances, sound recordings and telecommunications**

- the following performances are allowed, if performed on university premises for educational or training purposes and not for profit, before an audience consisting primarily of students, faculty or any person who is directly responsible for setting a curriculum for Laurentian University:
  - the live performance, in public, primarily by students, of a work;
  - the performance in public of a sound recording or of a work or performer's performance that is embodied in a sound recording; and/or
  - the performance in public of a work at the time of its communication to the public by telecommunication.

Each of the above performances are not only allowed if it is not based on an infringing copy of the work;

### **Broadcasts**

- make a single copy of a work at the time it is communicated to the public by telecommunication; and to keep the copy for up to thirty days to decide whether to perform the copy for educational or training purposes;

### **Reproduction for lessons by telecommunication**

- communicate a lesson (including tests or exams), to the students enrolled in that specific course, by telecommunication for education or training purposes, and record such

lessons. The student can also make a copy of such telecommunicated lesson to be views or listened to at a later time, provided that:

- the student and the institution must destroy the recording or copy within 30 days after receipt by students of their final course evaluations;
- the institution must take reasonable measures to limit the audience to students only, and to prevent the students from fixing, reproducing or communicating such lessons except as permitted under this exceptions.

The recordings cannot be sold or distributed widely (beyond the audience of students enrolled in the class);

### **Work available through Internet:**

Reproduce, communicate by telecommunication and perform for an audience consisting primarily Laurentian University's students or other persons acting under Laurentian University's authority, for educational or training purposes, works or other subject matter that is available through the Internet, unless:

- the works are protected by a Digital Lock that restricts access to the work or other subject-matter or to the website;
- a clearly visible notice (and not merely the copyright symbol alone) prohibiting such act is posted on the website or on the work or other subject matter itself; or
- the educational institution or person acting under its authority knows or should have known that the works were made available on the Internet without consent of the copyright owner;

and the following must be mentioned in respect of the work:

- the source; and
- name of author, performer, maker, or broadcaster (if provided in the source);

### **News and Commentary**

- make, at the time of its communications to the public by telecommunication, a single copy of a news program or a news commentary program, excluding documentaries, for the purposes of performing the copy for the students of Laurentian University for educational or training purposes; and
- perform the copy in public, at any time or times within one year after the making of such copy, before an audience consisting primarily of students of Laurentian University on its premises for educational or training purposes.



Educational institutions relying on this exception no longer have to pay royalties, destroy copies of news or commentary programs after one year, or keep records of the copies made of news commentary programs;

### **Reproduction for persons with Perceptual Disabilities**

- copy an entire work (other than a cinematographic work) onto an alternative format including translation, adaption and performance in public (except the making of a large-print book) for the purpose of serving students with perceptual disabilities as long as such an adaption is not already commercially available in that format.

### **Other Relevant Exceptions under the *Copyright Act*:**

The following are other exceptions under the Copyright Act that apply generally, but are relevant to educational institutions and persona acting under the authority of an educational institution.

#### **Computer Programs:**

If you own a copy of the computer program that is authorized by the owner of the copyright, or has a license to use a copy of the computer program, you may:

- reproduce the copy by adapting, modifying or converting it, or translating it into another computer language, if you prove that the reproduced copy:
  - is essential for the compatibility of the computer program with a particular computer;
  - is solely for your own use; and
  - was destroyed immediately after you ceased to be the owner of the copy of the computer program or to have a license to use it;
- reproduce for backup purposes the copy of a reproduced copy referred to above if you prove that the reproduction for backup purposes was destroyed immediately after you ceased to be the owner of the copy of the computer program or to have a license to use it; and/or reproduce the copy for the sole purpose of obtaining information so you can make the program and any other computer program interoperable.

#### **Encryption Research, Security and Temporary Reproductions for Technological Processes:**

- reproduce a work or other subject-matter for the purposes of encryption research if:
  - it would not be practical to carry out the research without making a copy;
  - you have lawfully obtained the work or other subject-matter; and
  - you have informed the owner of the copyright in the work or other subject-matter;
- reproduce a work or other subject-matter for the sole purpose, with the consent of the owner or administrator of a computer, computer system or computer network, of assessing the vulnerability of the computer, system or network or of correcting any security flaw; and/or

- make a reproduction of a work or other subject-matter if such reproduction:
  - forms an essential part of a technological process;
  - has the sole purpose of facilitating a use that is not an infringement of copyright;  
and
  - exists only for the duration of the technological process