

Copy*What*? Copyright issues and the instruction librarian

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Copyright Librarian, Learning Services
WILU, May 25, 2017



UNIVERSITY OF ALBERTA
COPYRIGHT OFFICE

What is copyright?

Copyright is a set of limited rights established by law.

Laws
Constitutional Documents
Consolidated Acts
Consolidated Regulations
Annual Statutes
Statutes Repeal Act: Reports, Deferrals and Repeals
Miscellaneous Statute Law Amendment Program
New Layout
New Layout for Legislation
Search
Basic Search
Advanced Search
Resources
Table of Public Statutes and Responsible Ministers
Table of Private Acts

Copyright Act gives rights holders the sole right to produce, reproduce, perform, or publish a work. This right is immediate, time limited, and transferrable.

Copyright Act includes exceptions that give users the right to deal fairly with those works.

The judicial branch of government (the courts) interprets the Copyright Act, making decisions about specific cases of alleged infringement.

- 15 - [Copyright](#)
- 17.1 - [Moral Rights](#)
- 18 - [Rights of Sound Recording](#)
- 19 - [Provisions Applicable](#)
- 21 - [Rights of Broadcasters](#)
- 22 - [Reciprocity](#)
- 23 - [Term of Rights](#)
- 24 - [Ownership of Copyright](#)
- 26 - [Performers' Rights](#)
- 27 - [PART III - Infringement of Copyright and Remedies](#)
- 27 - [Infringement of Copyright](#)
- 27 - [General](#)
- 27.1 - [Parallel Importation of Books](#)
- 28.1 - [Moral Rights Infringement](#)
- 29 - [Exceptions](#)
- 31.1 - [Network Services](#)
- 32 - [Persons with Perceptual Disabilities](#)
- 32.1 - [Statutory Obligations](#)
- 32.2 - [Miscellaneous](#)
- 32.3 - [Interpretation](#)
- 32.4 - [Compensation for Acts Done Before Recognition of Broadcasters](#)
- 33 - [Compensation for Acts Done Before Recognition of Broadcasters](#)
- 34 - [PART IV - Remedies](#)

JUDGMENTS OF THE SUPREME COURT OF CANADA

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Decisions > Supreme Court Judgments > CCH Canadian Ltd. v. Law Society of Upper Canada

Supreme Court Judgments

Case name: CCH Canadian Ltd. v. Law Society of Upper Canada
Collection: Supreme Court Judgments
Date: 2004-03-04
Neutral citation: 2004 SCC 13
Report: [2004] 1 SCR 339
Case number: 29320

starache, Michel; Binnie, William; Fish, Morris J.

R. 339, 2004 SCC 13

ment on cross-appeal

ant on cross-appeal

ment on cross-appeal

Thomson Canada Limited c.o.b. as Carswell
Thomson Professional Publishing

Respondent/Appellant on cross-appeal

and between

Law Society of Upper Canada

Appellant/Respondent on cross-appeal

Fair dealing for the purpose of research, private study, education, parody or satire does not infringe copyright.

Educational Institutions

29.4(1) is about displaying works

29.5 concerns performances (including movies)

30.01-02 are about works used in a lesson (online)

30.04 concerns works available on the Internet

Deals with collection management and maintenance.

Clarity around library responsibility for user copying.

Most of the above provisions
come with CONDITIONS.

• 27 - PART III - Infringement of Copyright and Moral Rights and Exceptions to Infringement

• 27 - Infringement of Copyright

• 27 - General

• 27.1 - Parallel Importation of Books

• 28.1 - Moral Rights Infringement

• 29 - Exceptions

• 29 - Fair Dealing

• 29.21 - Non-commercial User-generated Content

• 29.22 - Reproduction for Private Purposes

• 29.23 - Fixing Signals and Recording Programs for Later Listening or Viewing

• 29.24 - Backup Copies

• 29.3 - Acts Undertaken without Motive of Gain

• 29.4 - Educational Institutions

• 30.1 - Libraries, Archives and Museums

• 30.3 - Machines Installed in Educational Institutions, Libraries, Archives and Museums

• 30.4 - Libraries, Archives and Museums in Educational Institutions

• 30.5 - Library and Archives of Canada

• 30.6 - Computer Programs

• 30.62 - Encryption Research

• 30.63 - Security

• 30.7 - Incidental Inclusion

• 30.71 - Temporary Reproductions for Technological Processes

• 30.8 - Ephemeral Recordings

• 31 - Retransmission

• 31.1 - Network Services

• 32 - Persons with Perceptual Disabilities

• 32.1 - Statutory Obligations

• 32.2 - Miscellaneous

Copyright in context: know your ecosystem

Legislation (federal)

- Influenced by many factors including party in power, international agreements, etc.

Caselaw (decisions by courts and tribunals)

- Evolving, specific to each case.

Institutional policies and procedures (e.g., fair dealing guidelines)

- Risk tolerance can be specific to organization/legal counsel.

Fair Dealing Guidelines

PREAMBLE:

The **Copyright Act** contains a **Fair Dealing** exception, which permits the use of copyright-protected works without permission from the copyright owner or the payment of copyright royalties. To qualify for Fair Dealing, two tests must be passed:

- i) The "dealing" must be for one of the following purposes enumerated in the *Copyright Act*: research, private study, education, parody, satire, criticism, review or news reporting; and
- ii) The "dealing" must be "fair." The fairness of the dealing is assessed in accordance with a number of specific factors set out by the Supreme Court of Canada.

The purpose of these Guidelines is to provide a simple and straightforward approach to making determinations of the application of the Fair Dealing exception in particular circumstances. While the Guidelines are not intended to be a replacement for the full analysis outlined by the Supreme Court of Canada, use of the Guidelines is expected to yield a result consistent with such a full analysis in the vast majority of applicable cases.

GUIDELINES:

Under these Guidelines, and in accordance with the University's *Use of Copyright Materials Policy and Procedure*:

1. Course instructors, faculty, researchers and University employees may reproduce and communicate short excerpts from a copyright-protected work for the purposes of research, private study, education, parody, satire, criticism, review or news reporting.
2. Reproductions or communications of short excerpts for the purpose of news reporting, criticism or review must mention the source and, if given in the source, the name of the author or creator of the work.
3. Users may copy the following "short excerpts":
 - a) up to ten (10) percent of a copyright-protected work (including a literary work, musical score, sound recording or an audiovisual work);
 - b) an entire chapter from a book;
 - c) an entire article from a periodical publication;
 - d) an entire artistic work (including a painting, print, photograph, diagram, drawing, map, chart or plan) from a copyright-protected work containing other artistic works;
 - e) an entire newspaper article or page;
 - f) an entire single poem or musical score from a copyright-protected work containing other poems or musical scores;
 - g) an entire entry from an encyclopedia, annotated bibliography or similar reference work

provided that in each case, no more of the copyright-protected work is copied than is required in order to achieve the allowable purpose.

Distribute resources under the fair dealing exception as interpreted by the University of Alberta

4. Users may NOT copy the following:

- a) any of the works referred to in paragraphs 3(c) to 3(g) of these Guidelines where the publication containing the copyright-protected work does not contain other works. For example, no copy may be made of a play from a publication containing the play but no other work;
- b) unpublished works;
- c) proprietary workbooks, work cards, assignment sheets, tests and examination papers;
- d) instruction manuals;
- e) newsletters with restricted circulation intended to be restricted to a fee paying clientele;
- f) business cases which are made available for purchase; or
- g) multiple short excerpts from the same copyright-protected work, with the intention of copying or communicating substantially the entire work.

5. The **Copyright Office** can provide assistance with questions about the implementation or interpretation of these Guidelines.

What about licensed
library resources?

Negotiated terms of use (in an agreement with obligations enforceable by law).



The Library Quarterly: Information, Comm... > Vol. 85, No. 3, July 2015 > A Holisti



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Library Quarterly: Information, Community, Policy, vol. 85, no. 3, 0024-2519/2015/8503-0005\$10.00

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Vandewalle, Henri Verhaaren and Dirk Cattrysse
The Library Quarterly: Information, Community, Policy
Vol. 85, No. 3 (July 2015), pp. 295-318

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Topics: [Libraries](#), [Library operations](#), [Library collections](#), [Library networks](#), [Digital libraries](#), [Quadrants](#), [Library management](#), [Library warehousing](#), [Academic libraries](#), [Economic costs](#)

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Conflict between Contract Law and Copyright Law in Canada: Do Licence Agreements Trump Users' Rights?

[Lisa Di Valentino](#), *Faculty of Information and Media Studies,
University of Western Ontario*

Follow

Document Type

Working Paper

Publication Date

2014

Journal

FIMS Working Papers

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Last Page

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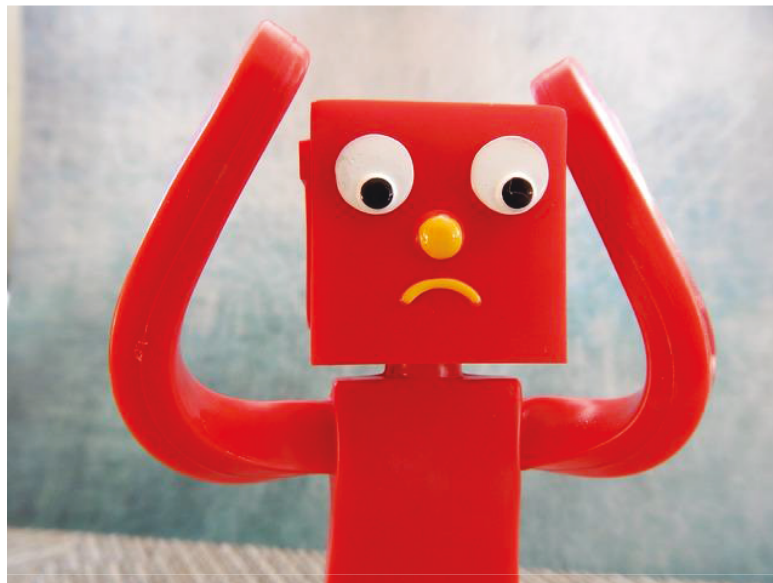
Abstract

I argue in this paper that it is not a settled issue in Canadian law that copyright exceptions provided in the Canadian Copyright Act can be trumped by contractual agreement, and that a strong argument can be made that they cannot. I first frame the issue by discussing the increasing use of digital rather than print materials in academic libraries, and the potential conflict between subscription agreements and the Copyright Act. I then address three approaches (jurisdictional, purposive, and statutory right) that can be taken to determine whether contractual terms are preempted by statutory provisions, and conclude that, in Canada, copyright exceptions are statutory rights that cannot be removed by contract. Finally, I briefly discuss technological protection measures and argue that their recent inclusion in the Copyright Act does not necessarily indicate legislative support for private ordering.

Notes

Presented at Ontario Library Association Super Conference 2014, Toronto, January 31, 2014.

<http://ir.lib.uwo.ca/fimswp/1/>



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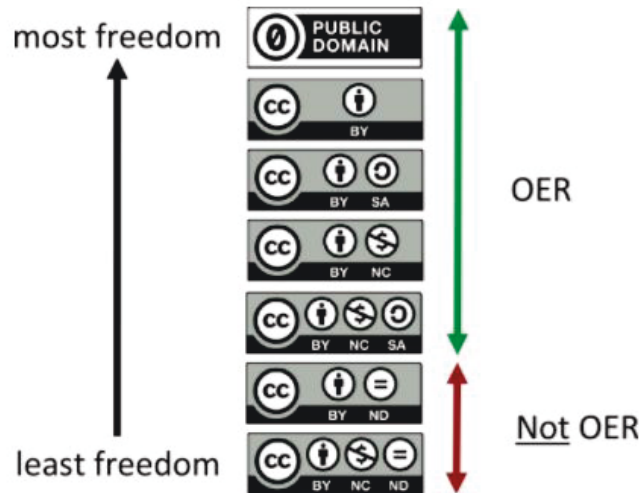


Fig. 9: CC licenses arranged from most to least permissive.

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- Best practices for attribution:
https://wiki.creativecommons.org/wiki/Best_practices_for_attribution

Copyright for Undergraduates: Lessons Learned While Teaching a Semester-Length Online Course

Tammy Ravas

Ravas, T. (2016). Copyright for Undergraduates: Lessons Learned While Teaching a Semester-Length Online Course. *Journal of Copyright in Education and Librarianship*, 1(1), 1-10.

DOI: 10.17161/jcel.v1i1.5916



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Keep it simple: Public Domain images

Works in the public domain are not protected by re-use and distribution restrictions related to copyright. A work enters the public domain when the copyright term expires or when the rights holder assigns a CC0 licence (or equivalent) to a work.

GENERAL (outdated but still fairly accurate):

- Canadian Public Domain Flowchart:
https://upload.wikimedia.org/wikipedia/commons/c/c4/Canadian_Public_Domain.svg



Finding public domain images:

- Wikimedia Commons: Free Resources/Photography
https://commons.wikimedia.org/wiki/Commmons:Free_media_resources/Photography

Copyright in the classroom tips:

- Provide links to works instead of copying them.
- Know your institutional policies and procedures related to copyright (e.g., fair dealing guidelines). In some cases the *Copyright Act* and caselaw might support more liberal uses.
- It's easy to use CC licensed / public domain works with confidence.
- Make re-use expectations of your own works clear to students. How do you want students to re-use the works you distribute in class? (consider CC)
- Think about why fair dealing is important to your work...

Parliamentary Review of the *Copyright Act*

- Education as a purpose for fair dealing was added to the Act in 2012.
- Five year parliamentary review of entire Act is scheduled to begin on or before November 7, 2017.
- Watch for more information as the review begins and consider contributing your experiences, as an academic instructor and author, to the public consultation.
- Final report likely in fall 2018, federal election likely in 2019.
- Possible topics (via Howard Knopf's blog):
http://excesscopyright.blogspot.ca/2017/01/copyright-reform-in-canada-2017-section_13.html

Questions?



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Questions (prepared)

1. If something is on the open web can't I just re-use it?
 - a. See section [30.04](#) of the *Copyright Act*.
2. What happens if someone accuses me of copyright infringement?
 - a. Contact your copyright office / contact. Provide them with as much detail about the situation as possible, including your rationale for using the work in question. Don't be afraid to question the claim (i.e., ask for details about the claim).
3. Do you hold the copyright in works you create as part of your employment?
 - a. In many scenarios this will depend on your employment (association/union) contract.

Resources noted during Q&A segment

Non-commercial user-generated content (UGC) s29.21(1) of the Copyright Act:

<http://laws-lois.justice.gc.ca/eng/acts/c-42/page-9.html#h-27>

3D Printing: Copyright and Other Intellectual Property Implications for Libraries. Ontario Library Association Copyright Users' Committee. December 4, 2015.

http://www.accessola.org/web/OLA/Events/Signature_events/Copyright_Symposium_event/2015_Copyright.aspx

Open Education Week 2017 Panel: Be it Resolved that All Knowledge be Open. March 30, 2017.

https://era-av.library.ualberta.ca/media_objects/avalon:1288

- Professor Sean Gouglas opens panel with discussion about a fair dealing assessment in a UA MOOC
- Amanda Wakaruk, "Copyright: fence or facilitator for open education?" at timecode 29:20

Fixcrowncopyright.ca

- Link to e-petition on Crown copyright. E-petition itself should (hopefully) be live before June.