

Introduction to Canadian Copyright and Open Licensing for OER

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CARL OE Webinar Series, December 10, 2019



[*Opening Up Copyright*](#)
[*instructional modules*](#)



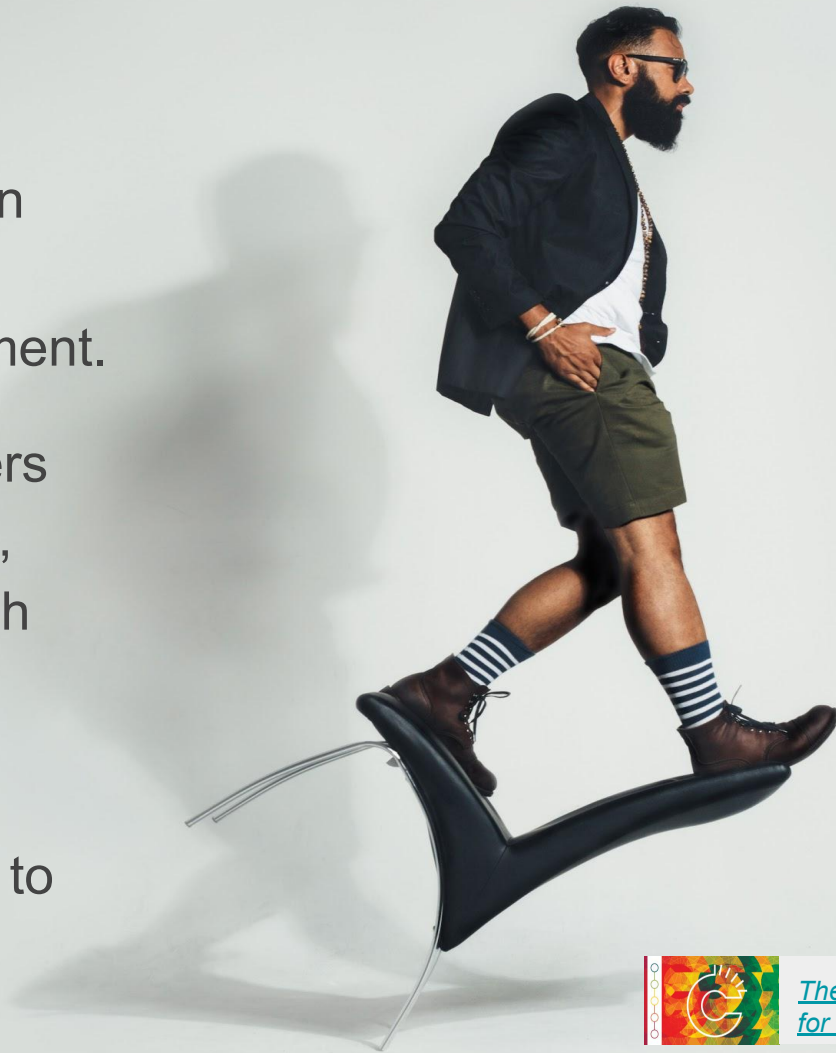
UNIVERSITY OF ALBERTA
COPYRIGHT OFFICE

What do you think of when you
hear the word, “copyright?”

Copyright is an enclosure mechanism and the Canadian *Copyright Act* is a policy instrument created by parliament.

The Act provides rights holders with the sole right to produce, reproduce, perform, or publish works subject to copyright.

The Act provides users with limited rights (comparatively) to make use of those works.



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 (R.S.C. 1985, c. C-42)
Full Document: [HT](#)
Act current to 2015
Notes: • See also
• Shaded

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The *Copyright Act* gives rights holders the sole right to produce, reproduce, perform, or publish a work. These rights are immediate, time limited, and transferrable. Employers are default rights holders.

The *Copyright Act* includes exceptions to infringement that give users the right to deal fairly with a substantial amount of a work protected by copyright.

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

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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

S.C.R. 339, 2004 SCC 13

Respondent/Appellant on cross-appeal

Thomson Professional Publishing

and between

Law Society of Upper



[S3 Copyright in Works](#)
[S13 Ownership of Copyright](#)
[CCH v. LSUC](#)

OER

Open Educational Resources are teaching, learning and research materials in any medium – digital or otherwise – that reside in the **public domain** or have **been released under an open licence** that permits no-cost access, use, adaptation and redistribution by others with no or limited restrictions. ([UNESCO](#))



[Public Domain](#)
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licence **c**e (*noun*)

license **s**e (*verb*)

Canadian Press Caps and Spelling <https://www.thecanadianpress.com/writing-guide/caps-spelling/>

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[Public Domain](#)
[Open Licensing and CC](#)

Copyright ownership and OER development.

- Who holds the rights in educational resources developed at your institution?
 - collective agreements?
 - institutional policies?
- What about collaborative educational resources?
- Does the rights holder want to make their educational resources open?
 - publishing agreements?



OER Basics

Wiley's requirements for OER (5Rs):

1. **Retain** – the right to make, own, and control copies of the content (e.g., download, duplicate, store, and manage)
2. **Reuse** – the right to use the content in a wide range of ways (e.g., in a class, in a study group, on a website, in a video)
3. **Revise** – the right to adapt, adjust, modify, or alter the content itself (e.g., translate the content into another language)
4. **Remix** – the right to combine the original or revised content with other open content to create something new (e.g., incorporate the content into a mashup)
5. **Redistribute** – the right to share copies of the original content, your revisions, or your remixes with others (e.g., give a copy of the content to a friend)

Open licences grant permission to use a copyright-protected work with few or no restrictions and can allow for uses consistent with the 5Rs.

Open licensing is a core infrastructural element of OER.

The copyright status of a work does not change when a standard open licence is assigned by the rights holder *or someone licensed to do so.*

Creative Commons licences are the most common OER open licences.



<https://creativecommons.org/>

- Global network and movement
- Nonprofit organization
- Set of legal tools
 - CC licences make it easy for rights holders to share their works with the public under more permissive terms than the default “all rights reserved.”



[Open Licensing and CC](#)

Creative Commons licences

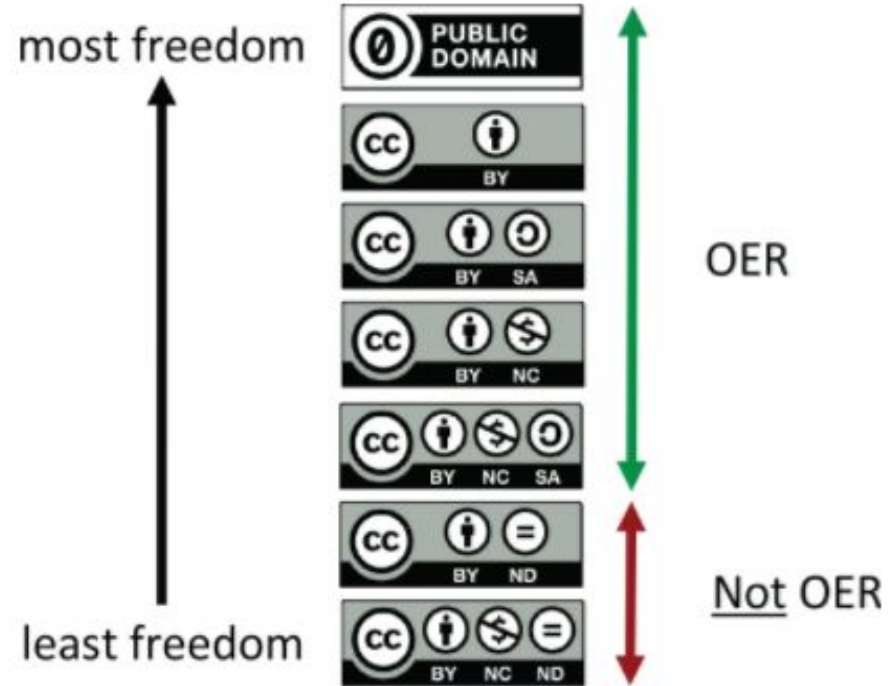
Licence elements:

BY = attribution

SA = share alike*

NC = noncommercial

ND = no derivatives*



*SA, ND triggered by distributing modified versions

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

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Assigning a CC licence to an OER

Choose a licence that is OER compatible.

<https://creativecommons.org/choose/>

Mark the work with the CC button.

<https://creativecommons.org/about/downloads/>

- Best practice: include a statement and link back to the licence on the CC website.

https://wiki.creativecommons.org/wiki/Marking_your_work_with_a_CC_license



Example

Promoting Use and Contribution of Open Educational Resources

Sanjaya Mishra, PhD

Education Specialist, eLearning
Commonwealth of Learning, Canada



Commonwealth Educational Media Centre for Asia
New Delhi

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For further information, contact:

Commonwealth Educational Media Centre for Asia
7/8, Sarv Priya Vihar
New Delhi 110016
<http://www.cemca.org.in>

Printed and published by Mr. R. Thyagarajan, Head (Administration and Finance), CEMCA, 7/8 Sarv Priya Vihar, New Delhi - 110016, India.

Copyright and using third party content (aka other people's work) in an OER.

- Find content that is *already* available for use.
- Ask the rights holder for permission to use the work.
- Assess whether a statutory exception to infringement might apply to your use.

Find content that is available for use in an OER.

- Public domain / not protected by copyright
 - CC0 or other statement of rights waiver or public domain status.
 - Works for which the copyright term has expired ([Canadian Copyright Term Flowchart](#), UA Copyright Office).
 - Insubstantial amounts of a work ([Substantiality](#), UA Copyright Office).
 - Facts.
- Terms of use that support inclusion in an OER
 - Compatible Creative Commons or other open licences.

Ask the rights holder
for permission to use
their work in an OER.

- Can you identify and contact the rights holder?
 - If yes, [OER permission templates](#) (UA Copyright Office).
 - If no, apply for an [Unlocatable Copyright Owner](#) licence from the Copyright Board of Canada (**or** find another work to use).



Search for images...



I want something I can

☐ Use for commercial purposes ☐ Modify or adapt

Search for free content in the public domain and under Creative Commons licenses.

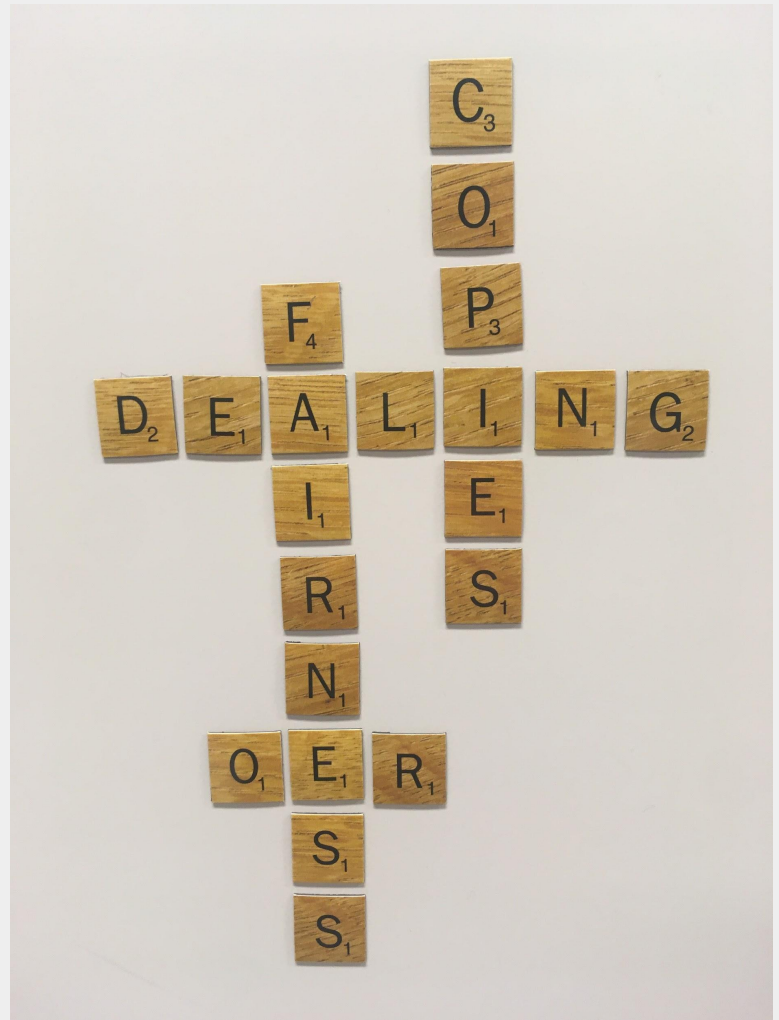
Learn more about CC licenses [here](#).

<https://search.creativecommons.org/>



[Finding Open & Creative
Commons Content](#)

Assess whether a statutory exception to infringement might apply to your use.



- S29. Copyright Act: Fair dealing for the purpose of research, private study, education, parody or satire does not infringe copyright.
- Allows for use of copyright-protected works without payment or permission.

- There is **no “OER caselaw”** in Canada.
- Courts will use multiple factors to make a fair dealing determination.
- Who would make the fair dealing argument in a case of infringement?
- Institutional fair dealing guidelines are not intended to support OER.



Weeramuni, L., (2019). How to Fight Fair Use Fear, Uncertainty, and Doubt: The Experience of One Open Educational Resource. *Journal of Copyright in Education and Librarianship*, 3(1), 1-21. <https://doi.org/10.17161/jcel.v3i1.9751>



FAQ: Fair Use

Some of the content is now marked "all rights reserved." What does this mean?

How is "all rights reserved" content different from the rest of OCW content?

What if I want to download, copy, modify, reuse, remix, or redistribute materials that include "all rights reserved" content?

Can MIT OpenCourseWare help me to get permission or to determine if my intended use qualifies as "fair use"?

Why is OCW publishing material under "fair use"?

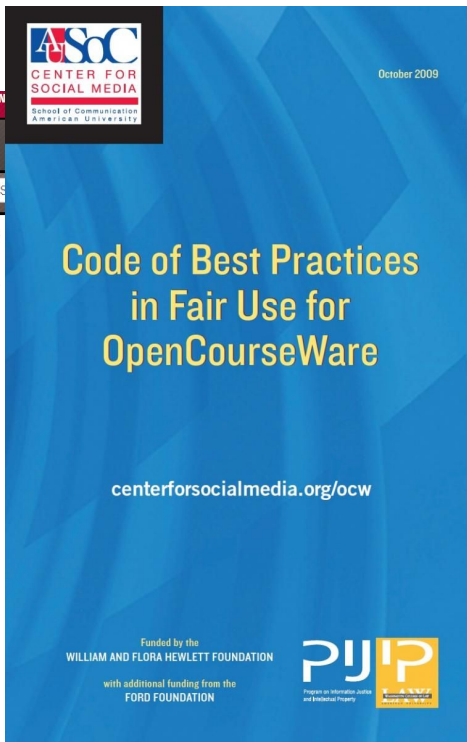
Isn't this stealing, really?

Does this mean you requested permission but were denied?

What is *The Code of Best Practices in Fair Use for OpenCourseWare*?

Where did *The OCW Code of Best Practices in Fair Use for OpenCourseWare* come from?

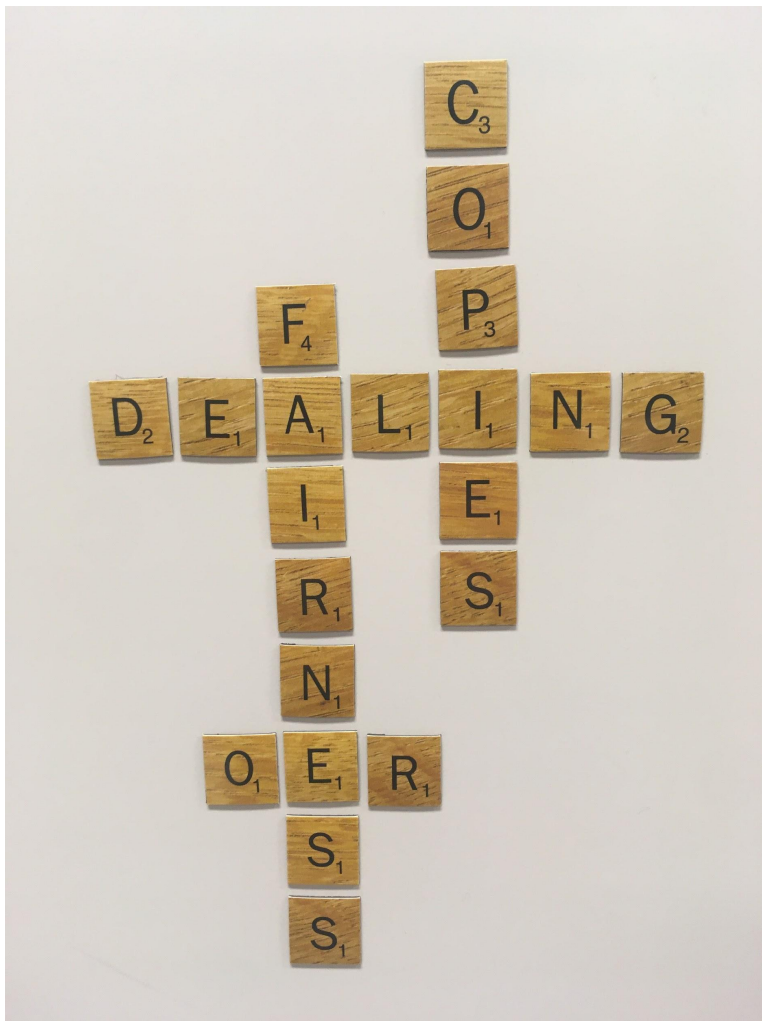
<https://ocw.mit.edu/help/faq-fair-use/#4>



Abstract

The launch of one of the early online open educational resources (OER) in 2002, the approach to addressing copyright was a central question: Should the university or the faculty own their material? How should third-party material be handled? Was all of its use considered fair? Section 107 of the U.S. Copyright Act (Title 17, United States Code) provided a legal framework because of its educational purpose? Or was permission necessary for this project to succeed and protect the integrity of the university? For many years, this OER was conservative in its approach to third-party material, avoiding making fair use claims that it was too risky and difficult to prove in the face of an infringement claim. Additionally, being one of the early projects of its kind, it was fearful of becoming a target for ambitious copyright holders who might make headlines (and perhaps win lawsuits). It was not until the publication of *The Code of Best Practices in Fair Use for OpenCourseWare* by a community of practitioners who believed that if fair use was applied consistently by documentary film makers, video creators, and others in the digital media space, it worked in open education as well. Once this approach was adopted, universities and institutions were able to offer more complete course content to their users than before. This paper describes what happened at this early open educational resource offering.

<http://archive.cmsimpact.org/ocw>



Is including third party content in OER fair?

FACTORS CONSIDERED BY SCC (could be others)

DEALING:

- Purpose - education
- Character - broad distribution
- Amount - substantial to entire
- Alternatives - case by case analysis

ORIGINAL WORK:

- Nature - what was creator's intent?
- Effect of dealing on - case by case analysis



[CCH v. LSUC](#)

Summary

- Copyright is a limited enclosure mechanism
- Open licences are an infrastructural element of OER
- Rights holder assigns open licences (who holds the rights in ER is specific to the educational institution)
- When using third party content: supportive terms of use, permission, or user rights / statutory exception to infringement





Questions?

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Copyright Librarian

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of Alberta**

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@awakaruk (personal)

Resources and references not noted within presentation

Web-based open content for *CC Certificate for Educators and Librarians*: <https://certificates.creativecommons.org/cccertedu/>

Source of 'Figure 9' on Slides 11 and 14:

Green, C. 2017. Open Licensing and Open Education Licensing Policy. In: Jhangiani, RS and Biswas-Diener, R. (eds.) *Open: The Philosophy and Practices that are Revolutionizing Education and Science*. Pp. 29–41. London: Ubiquity Press. DOI: <https://doi.org/10.5334/bbc.c>. Licence: CC-BY 4.0

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