

1. What is the purpose of the Copyright Act?

The purpose of the Copyright Act is to protect the rights of creators to be paid for, and to control the use of, their works and to address the needs of users who want access to material protected by copyright. The balance is achieved by providing creator with legal “rights” and then limiting those rights through “exceptions” for the benefit of certain users.

In 1997 the copyright law was amended to limit the rights of creators, publishers and producers by new “exceptions” which permit educational institutions to use, in specified ways, without permission, and, in some cases, without paying royalties, material protected by copyright.

2. Who benefits from the new exceptions?

The beneficiaries of the new exceptions are “educational institutions” which are defined as non-profit institutions providing pre-school, elementary, secondary, post-secondary, continuing, professional or vocational education or training. Persons “acting under the authority of an educational institution”, such as teachers, also benefit from the new exceptions. An educational institution which makes a “profit” does not qualify for any of the new exceptions.

3. Do school libraries benefit from the exceptions for educational institutions?

Yes. The new copyright law specifically states that the exceptions for educational institutions apply to a library which forms part of an educational institution.

4. How can teachers legally use material protected by copyright?

A teacher can legally use material protected by copyright by following the steps below:

- (a) determine if an exception in the copyright law permits that particular use of the work by a teacher;
- (b) if an exception is not available, determine if a general license from a “collective” organization representing copyright owners has been signed by the ministry/department of education or school board;
- (c) if a general license has not been signed, contact the responsible “collective” for a specific permission;
- (d) if the responsible “collective” cannot give permission contact the owner of the copyright to obtain permission to use the work.

5. What is a collective?

A collective is an organization that administers the legal rights provided under the Copyright Act on behalf of copyright owners and rights holders who are members of that collective. Collectives can only license what copyright owners and rights holders authorize them to license. There are both print and audiovisual collectives. COPIBEC and CANCOPY license photocopying in schools. Two other collectives, Visual Education Centre (VEC) and Audio Ciné Film Inc., license the public performance of some audiovisual material in schools. These licenses permit copying and public performance without infringing copyright, as long as the copyright or public performance remains within the negotiated limits set out in the license.

6. Can a teacher copy a work onto a blackboard or flip chart without permission from the copyright owner?

Yes. A new exception permits a teacher to copy a work, by hand, onto surfaces “intended for displaying handwritten material”. Examples of the kinds of surfaces covered by the new exception are dry-erase surfaces (like a blackboard) and flip charts. However, the copy cannot be made under the exception if a “motive of gain” is involved.

7. What does “motive of gain” mean?

In the new law “motive of gain” is defined in a negative fashion. An educational institution does not have a motive of gain where it recovers no more than the costs, including overhead costs, associated with doing an act under an educational exception.

8. Can a teacher copy a work for use on an overhead projector, or similar device, without permission from the copyright owner?

Yes. A new exception permits a teacher to copy a work in order to project it on an overhead projector. There are four conditions.

- (a) This exception does not apply if the work is “commercially available” in a medium or format that is appropriate for the teacher’s purpose. What “commercially available” means is described further on.
- (b) The copy can only be used on the premises of the educational institution.
- (c) The copy can only be used for the purposes of education or training.
- (d) The copy cannot be made if there is a “motive of gain” involved.

9. When is a work “commercially available”?

This term is defined in the new law. A work is “commercially available” if it is available on the Canadian market within a reasonable time, for a reasonable price, with reasonable effort, or, is available under a license from a collective society within a reasonable time, for a reasonable price and with reasonable effort. A work which is available under license from a collective society is a “commercially available” work. If a collective cannot license the type of use the teacher is interested in, the teacher is required to take reasonable steps to obtain a copy from the copyright owner, or a representative of the owner, such as a publisher, producer or distributor. The word “reasonable” is not defined. The interpretation of the word “reasonable” would be based on “common sense” and on any particular circumstances that should be taken into account.

10. Can a work be used in an examination or test without permission from the copyright owner?

Yes, unless the work is “commercially available” in a medium or format that is appropriate for the teacher’s purpose. A new exception states that the rights of a copyright owner are not infringed if a work is copied, translated, performed or communicated by telecommunication for a test or examination. There are three conditions.

- (a) The exception does not apply if the work is “commercially available” in a medium or format that is appropriate for the teacher’s purpose. This includes availability in a medium or format appropriate or (r)-00.4o17.972Tw(o)10.4)-0(m)-0(o.4o17.97-7.8o.4o17.9751.0)-
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11. Can students perform a work protected by copyright, such as a play, in the classroom without permission from the copyright owner?

Yes. There is a new exception which permits live performances, primarily by students. An example is the performance of a play in a drama class. There are five conditions to be met before this exception applies. The performance must:

- (a) take place on the premises of the educational institution;
- (b) be for educational or training purposes,
- (c) not be for profit;
- (d) take place before an audience consisting primarily of students of the educational institution, instructors acting under its authority or any person who is directly responsible for setting curriculum; and
- (e) not involve a "motive of gain".

12. Can sound recordings protected by copyright be played in the classroom without permission from the copyright owner?

Yes. The same five conditions applying to live performances also apply to the playing of sound recordings. The playing of the sound recording must:

- (a) take place on the premises of the educational institution;
 - (b) be for educational or training purposes;
 - (c) not be for profit;
 - (d) take place before an audience consisting primarily of students of the educational institution, instructors acting under its authority or any person who is directly responsible for setting curriculum;
- and
- (e) not involve a "motive of gain".

13. Can radio and television programs be played in the classroom without permission from the copyright owner?

Yes. A new exception permits the use of a radio or a television to receive programs, but only at the same time the program is aired. An example is a movie that is broadcast by the CBC that can also be rented from the video store. The exception would permit the movie to be viewed in the classroom at the same time as it was being broadcast by the CBC. The exception would not permit a teacher to rent the same movie at the video store and then show it on a television in the classroom. The playing of the television or radio must:

- (a) take place on the premises of the educational institution;
- (b) be for educational or training purposes;
- (c) not be for profit;
- (d) take place before an audience consisting primarily of students of the educational institution, instructors acting under its authority, or any person who is directly responsible for setting curriculum;

and

- (e) not involve a "motive of gain".

14. Can a teacher copy news and news commentary from radio and television programs without permission from the copyright owner?

Yes. However, this exception has not yet been proclaimed in force. It is expected that it will come into force in 1999. This exception permits non-profit educational institutions to make a single copy of a "news program" or a "news commentary program" and to use the copy, on their premises, for educational and training purposes. The copy can only be made at the time the program is aired. The audience must consist primarily of students of the educational institution. "Documentaries" are specifically excluded from the exception. The law does not define news program, news commentary or documentary. The following conditions apply:

- (a) the copy can be made and shown without the permission of its copyright owner or the payment of a royalty an unlimited number of times for up to one year from the date the copy is made:
- (b) after one year the copy must either be erased or paid for: and

(c) the educational institution is required to provide information relating to the making, destruction, performance and marking of the copy to the copyright owner or a collective representing the owner.

Copies which are not destroyed after one year will be subject to payment, and terms and conditions relating to the use of the copy. If educators and copyright owners cannot come to an agreement, the Copyright Board, an independent tribunal established by the Copyright Act, has the authority to set the amount of the payment and the terms and conditions of use. In copyright law this is called a "tariff". If asked to set a tariff, the Copyright Board will hold hearings to listen to the views of educators and copyright owners.

15. Can a teacher copy other kinds of radio and television programs for educational purposes without permission from the copyright owner?

Yes. However, this exception has not yet been proclaimed in force. It is expected that it will come into force in 1999. An educational institution, or a teacher acting under its authority, may make a single copy of all other types of broadcast programs (i.e. those that are not "news programs" or "news commentary programs"). The copy can only be made at the time the program is aired.

A teacher may examine the copy for up to 30 days to determine whether the copy will be used on the premises of an educational institution for educational purposes. After thirty days the copy must either be erased or paid for. The educational institution is required to provide information relating to the making, destruction, performance and marking of the copy to the copyright owner or a collective representing the owner. A copy retained after the expiration of the 30 day period may only be viewed by an audience consisting primarily of students of the educational institution.

Copies which are not destroyed after thirty days will be subject to payment, and terms and conditions relating to the use of the copy. If educators and copyright owners cannot come to an agreement, the Copyright Board, an independent tribunal established by the Copyright Act, has the authority to set the amount of the payment and the terms and conditions of use. In copyright law this is called a "tariff". If asked to set a tariff, the Copyright Board will hold hearings to listen to the views of educators and copyright owners.

16. Does the enactment of new exceptions in the copyright law eliminate the need for licences with collectives?

No. The relationship between exceptions and a collective licence is best explained as a two tier system. The copyright law is the first tier. The law defines the "rights" of copyright owners and the "exceptions" to those rights for the benefit of educational institutions. A licence from a collective society provides additional access that is not available under the exceptions in the law. Educational institutions pay a sum of money for this increased access. The scope of the increased access is negotiated between the contracting parties. For example, the contracting parties could be a ministry/department of education and a collective.

17. Is my school licensed by collectives?

CANCOPY and COPIBEC have negotiated licences with provincial and territorial ministries/departments of education or school boards in British Columbia, Alberta, Saskatchewan, Manitoba, New Brunswick, Newfoundland and Labrador, Ontario, Quebec, Yukon and the Northwest Territories. Licences with the remaining two provinces are in the final stages of negotiation. COPIBEC licenses users in Quebec, and CANCOPY licenses users elsewhere in Canada. Through reciprocal agreements with collectives in other countries, the two Canadian collectives license published works from around the world.

For audiovisual material, the Visual Education Centre (VEC) and Audio Ciné Film Inc. negotiate site licences with school boards/districts and schools for feature length films. However, public performance licences for educational and television programs are also available from all Canadian educational video producers. In provinces or territories where there are no agreements with these collectives, the activities permitted under the typical licences would likely be infringing. Where there is no licence, and where the Copyright Act does not permit the copying, permission from the copyright owner is required before making a copy or publicly performing audiovisual or print works.