

General Copyright Guidelines – Alan Kilpatrick, MLIS Candidate – 26 July 2012

Copyright is a balance between those who hold copyright and those who use copyrighted works. Copyright's purpose is to facilitate innovation, learning, expression of ideas, and the dissemination of knowledge.

Here are some questions to consider when copying:

1. **Is the work being copied protected by Copyright?** Ideas, facts, and works in the public domain (often the life of the author plus fifty years) are not protected by Copyright. They may be copied and reproduced without restriction.
2. **Are you copying an insubstantial portion of a work?** Copyright is the sole right to reproduce a substantial portion of a work. An insubstantial portion may be copied without any permission. Exercise individual judgment when determining whether copying is substantial or insubstantial. Consider how much is being copied as well as the significance of the portion being copied to the overall work.
3. **Is the work available via a Western Libraries digital license?** Western Libraries negotiates digital and site licenses directly with content providers and electronic vendors. The licenses purchased grant the Western community permission to access a vast amount of licensed databases, e-journals, and e-books.
4. **Is the work licensed under Creative Commons or available via open access?** Works licensed under Creative Commons and works available via open access may often be copied liberally for non-commercial purposes.
5. **Is the work publicly available on the Internet?** Websites are protected by Copyright in the same way print items are protected by copyright. Uploading a webpage to the Internet and making it publicly available can be a form of implied permission. Websites typically give implied permission that enables visitors to link, copy and print material from the site.
6. **Can you link?** Yes! Hyperlinking does not constitute creating a copy. Feel free to link to other websites or to provide links to your students or library patrons. Recent Supreme Court cases, *Crookes v. Newton* and *Warman v. Fournier*, have clarified this question.

7. **Fair Dealing** – If a substantial portion of a copyrighted work is being copied, reproduction may fall within fair dealing. This is a user right to copy a substantial portion, when fair and reasonable to do so, without permission or reimbursement.

An analysis involving six criteria can help evaluate fairness on a case by case basis:

Purpose – Fair dealing for the purpose of research, private study, education, parody, satire, criticism, review, and news reporting does not infringe copyright. These categories must be interpreted broadly. Copying must fall within one of these categories. If the copying does fall within, proceed to consider the remaining criteria below:

A. Character – Multiple copies widely distributed might be unfair while a single copy for a specific purpose may be fair. Consider the traditional and customary copying practices at your institution. They help shape what is considered fair.

B. Amount – Consider the proportion being copied in relation to the entire work. No set amount exists which is fair. Exercise individual judgement, make a reasonable decision, and adopt the perspective of the end user. In some cases, it could be fair to copy an entire work.

C. Alternatives – Was it necessary to copy this particular work? Was it necessary to copy the amount that was copied? Copying may be fair if it can be demonstrated it was necessary to copy a particular work and a particular amount.

D. Nature – Consider the nature of the work. Copying a confidential work not intended for public release may be unfair. Copying a published piece of academic writing may be fair.

E. Effect – Does the copy have a demonstrable and harmful effect on the commercial market of the original work? If so, this might be unfair.

Adapted from:

Canadian Association of University Teachers. (2011, April). *CAUT Guidelines for the Use of Copyrighted Material*. Retrieved from http://www.caut.ca/uploads/Copyright_guidelines.pdf

Canadian Association of University Teachers. (2008, December). *CAUT Intellectual Property Advisory: Fair Dealing*. Retrieved from <http://www.caut.ca/uploads/IP-Advisory3-en.pdf>

Murray, L. & Trosow, S. (2007). *Canadian Copyright: A Citizen's Guide*. Toronto: Between the Lines.

Trosow, S. (2012, July 14). *SCC decisions provide clear guidance on fair dealing policies*.

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