Introduction to Copyright

Copyright subsists in every original literary, dramatic, musical and artistic work, as well as in performers’ performances, sound recordings and broadcast signals. Copyright protects the way an idea is expressed, but it does not protect the idea itself. In some cases, copyright does not apply at all. For example, copyright does not protect facts, statistics, data, equations, news, simple drawings, methods, plots, characters, titles, names, short phrases or slogans, although trademark protection may be applicable in some of these examples.

University of Manitoba community members are frequently creators of works that are subject to protections of the Copyright Act. Community members are also users of copyright-protected materials as they study, research and teach at the University. The Copyright Act aims to strike a balance between creator rights and user rights.

In general, the term of copyright lasts for the life of the author plus 50 years from the end of the year in which the author died. Once the term of copyright has expired, a work becomes part of the public domain and the work can be used (e.g., reproduced or communicated), without permission.
The UM Copyright Guidelines include information about copyright concepts such as Fair Dealing, other exemptions in the Copyright Act, library licences, digital locks, infringement, permission, attribution, modifying, the public domain, as well as other relevant copyright topics.

Attribution and/or Citation

Academic integrity requires the user of a copyrighted work to provide proper attribution or citation when copying or communicating the work, even in cases where permission is not required to use the work. The Copyright Act requires that the user copying or communicating short excerpts from a copyright-protected work for the purpose of news reporting, criticism or review to mention the source and, if given in the source, the name of the author or creator of the work. Beyond the requirements of the Copyright Act, academic integrity obligations require the user to provide proper attribution or citation when copying any work.

For information about correct citation and style guides, see the University of Manitoba Libraries website.

Copyright Infringement

It is an infringement of copyright to copy or communicate more than a short excerpt of a copyright-protected work, either physically or digitally, without the permission of the copyright holder, unless copying or communicating the work falls within one of the exemptions in the Copyright Act.

Copyright infringement can carry serious consequences, including civil or criminal proceedings. The University may also take disciplinary action in relation to copyright infringement.

Library Licences and Other Licences

A licence is a binding contract between parties, and thus supersedes other considerations including the Copyright Act’s exemptions (such as Fair Dealing).

The University has entered into numerous licence agreements with publishers and aggregators pursuant to which it obtains access to published works in electronic form. The digital licences typically specify the uses that the University can make of the works to which access is provided. Digital licence information is included with the library record and should be verified every time an e-resource is used as licence terms may change.

A licence that prohibits the use of excerpts in a learning management system (such as UM Learn) or in a course pack cannot be copied and included in UM Learn or in a course pack. Both the licence terms and conditions, and the UM Copyright Guidelines, must be followed. In the case of conflict, the terms and conditions of the licence take precedence over the UM Copyright Guidelines. Where a licence prohibits copying, use the URL (permalink) provided by the library.

For information about the restrictions imposed on copyright-protected library resources that are made available under digital licences, see the University of Manitoba Libraries website.
Some resources have permissive licences, such as those listed as Creative Commons works. All resources with a Creative Commons licence may be shared freely for non-commercial purposes without permission, provided attribution is given. Some Creative Commons resources have licence restrictions regarding adapting, cropping, commercial use, etc. See the Creative Commons website for more details.

Digital Locks

Some copyright holders use digital locks (technological protection measures) to restrict access to copyright-protected works and/or to limit the use that can be made of such works. The Copyright Act prohibits the circumvention of digital locks to obtain access to copyright-protected works. In order to circumvent a digital lock, it is necessary to obtain the permission of the copyright holder unless the circumvention is to accommodate a disability. See Perceptual Disabilities in the Guidelines for more information.

Modifying/Adapting

Before modifying or adapting a work or making a derivative of a work, permission must be obtained from the copyright owner. Derivative works include revisions, translations, condensations, elaborations, fictionalizations, dramatizations, art reproductions, musical arrangements or any new version of a work.

Being inspired by an idea expressed by another individual and creating a new work as a result is acceptable without permission. As well, adapting for teaching purposes may be allowed as long as the work is not distorted, mutilated or otherwise modified in a manner which may damage the reputation of the author.

Whether modifying, adapting, or using a work as inspiration, attribution or proper citation is required.

Permission

If copying or communicating a copyright-protected work falls outside the UM Copyright Guidelines or the Copyright Act exceptions, permission from the holder of copyright must be secured. Written permission is strongly recommended. The Copyright Office can assist in obtaining the necessary permissions. Once permission has been obtained, it is advisable to note on the copy that permission was secured (for example, “Copied with permission”), and to retain a copy of the written permission in the event that copying or communicating the work is ever challenged.

Fair Dealing Exemption of the Copyright Act

The Fair Dealing provision in sections 29, 29.1 and 29.2 of the Copyright Act permits the use of a copyright-protected work without permission from the copyright owner or the payment of copyright royalties.
To qualify for Fair Dealing, two tests must be passed. First, the “dealing” must be for a purpose stated in the Copyright Act:

1) Research;
2) Private study;
3) Criticism;
4) Review;
5) News reporting;
6) Education;
7) Satire;
8) Parody.

Teachers, instructors, professors and staff members may communicate and reproduce, in paper or electronic form, short excerpts from a copyright-protected work for the purposes noted above. The Copyright Act requires that when copying or communicating short excerpts from a copyright-protected work for the purpose of news reporting, criticism or review that the source, and, if given in the source, the name of the author or creator of the work be mentioned. Beyond the requirements of the Copyright Act, academic integrity obligations require one to provide proper attribution or citation when copying any work.

The second test is that the dealing must be “fair”. The UM Copyright Guidelines permit faculty members, instructors, and staff members to copy and communicate, in paper or electronic form, short excerpts from copyright-protected works for any of the eight Fair Dealing purposes noted above. The Supreme Court of Canada considered the following factors in determining whether a dealing is fair:

1. The purpose of the proposed copying;
2. The character of the proposed copying, including whether it involves single or multiple copies, and whether the copy is destroyed after it is used for its specific intended purpose;
3. The amount or proportion of the work which is proposed to be copied and the importance of that work;
4. Alternatives to copying the work, including whether there is a non-copyrighted equivalent available;
5. The nature of the work, including whether it is published or unpublished; and
6. The effect of the copying on the work, including whether the copy will compete with the commercial market of the original work.
Applying the above factors on a daily basis to achieve clarity as to what is fair can prove difficult for the average user. As such, in consultation with universities across Canada, guiding principles in relation to Fair Dealing have been established and adopted nation-wide.

A short excerpt in the context of Fair Dealing means:

i. Up to 10% of a copyright-protected work (including a literary work, musical score, sound recording, and an audiovisual work);

ii. One chapter from a book;

iii. A single article from a periodical;

iv. An entire artistic work (including a painting, print, photograph, diagram, drawing, map, chart, and plan) from a copyright-protected work containing other artistic works;

v. An entire newspaper article or page;

vi. An entire single poem or musical score from a copyright-protected work containing other poems or musical scores;

vii. An entire entry from an encyclopedia, annotated bibliography, dictionary or similar reference work;

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

When considering copying or communicating a short excerpt, the most advantageous of sections (i) through (vii) may be selected. For example:

- If a book is 200 pages long, up to 20 pages may be copied.
- If one chapter of a book is more than 10% of the total book, the one chapter may be copied.
- If two journal articles from a journal issue make up 10% or less of the total journal issue, the two articles may be copied.

Copying or communicating multiple short excerpts from the same copyright-protected work, with the intention of copying or communicating more than a fair amount, is prohibited. If more than a fair amount is desired, consider purchasing the work.

Fair Dealing is determined on a case-by-case basis. For assistance in evaluating what is fair, or to copy or communicate beyond the limits in the UM Copyright Guidelines, contact the Copyright Office at um.copyright@umanitoba.ca or 204-474-9607. An evaluation of whether the proposed copying or communication is permitted under Fair Dealing will be made based on all relevant circumstances.
A faculty member or instructor, or his or her proxy may:

1) Provide a copy of a short excerpt to students enrolled in a course of study as a handout;

2) Email a copy of a short excerpt to students enrolled in a course of study;

3) Post a copy of a short excerpt on a learning management system (such as UM Learn) stored on a secure server or other device that is only accessible by students enrolled in a course of study, unit or program of instruction (e.g., password-protected);

4) Include a copy of a short excerpt in a course pack sold to students enrolled in a course of study;

5) Distribute a copy of a short excerpt used in a lecture or classroom presentation such as a PowerPoint presentation presented to students enrolled in a course of study.

In each case, a copy of the short excerpt may also be provided or made available as required to another faculty member, instructor or to University staff.

As a safeguard to protect the interests of copyright holders, the work from which the copy of the short excerpt is made must be in the lawful possession of the University, faculty member or instructor. This would include a work in the collection of the University Libraries or a faculty member or instructor, a work borrowed by the University Libraries or faculty member or instructor through an inter-library loan, or a short excerpt that is copied and communicated to the University or a faculty member or instructor under Fair Dealing.

Fair Dealing can apply in a number of circumstances, as long as it is for an allowable purpose (e.g., education) even if the allowable purpose is not the sole purpose of the copying. Fair Dealing copies for mainly commercial purposes should be avoided.

**Research and Fair Dealing**

A copy of a short excerpt of a copyright-protected work may be made for use by an academic staff member in conducting research on a specific topic of enquiry or for inclusion in a personal collection of research resources. The member may share a copy of the short excerpt with other members and students both within the University and within another educational institution with whom the member is engaged in collaborative research. In sharing a copy of the short excerpt, the member may email the copy to the students and other members, or post the copy to a website on a secure server or other device, provided that the website is secured (e.g., password-protected) and is only accessible by those members and students with whom the member is conducting collaborative research.

**UM Learn and Fair Dealing**

Under the UM Copyright Guidelines, a short excerpt of a copyright-protected work may be posted to a learning management system (such as UM Learn). The following safeguards must be met:

1. The learning management system must be operated by or under the control of the University.
2. The learning management system must be stored on a secure server or other device (e.g., password-protected).

3. The short excerpts posted to the learning management system must only be accessible by students enrolled in the course of study, unit or program of instruction for which the short excerpts have been posted and by faculty members, instructors or University staff that require access to the learning management system.

4. To give students an option of how to access course materials, the same short excerpt may be made available to students through a learning management system, an email, a class handout, or in a course pack. However, no more than a short excerpt from a work from across all editions of a copyright-protected work may be copied and made available to students during a specific course of study irrespective of the format in which it is made available (e.g., in paper or electronic form).

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Course Packs and Fair Dealing

A course pack, or custom courseware, is comprised of a compilation of excerpts of different works to be used either as required or supplementary readings by students enrolled in a course of study.

Copying or communicating a copyright-protected work is not to substitute for the purchase of the work that was copied or communicated.

A guiding principle behind the production and sale of course packs is to ensure that no profit is made on course pack production and sale.

Course packs that incorporate copies of excerpts of copyright-protected works made under these Guidelines must be sold by the University directly to students. The course packs must not be sold to an intermediary (e.g., a student association) that sells the course packs to students.

To give students the choice of how to access course materials, the same short excerpt may be made available to students in a course pack, an email, a class handout, or through UM Learn. However, no more than a short excerpt from a work from across all editions of a copyright-protected work may be copied and made available to students during a specific course of study irrespective of the number of formats in which it is made available (e.g., in paper or electronic form).

If an extract to be included in a course pack exceeds the limitations of a short excerpt as set out in the UM Copyright Guidelines, transactional permission for making the copies should be secured from the copyright holder or from the holder’s licencing agent.

University course packs may include copies of copyright-protected works for which the University has a licence with the publisher or aggregator, as long as the terms of the licence permit the making of copies for inclusion in course packs. A copyright-protected work made available to the University under a licence with a publisher or aggregator that prohibits the use of extracts in course packs cannot be copied and included in a course pack. Any copying and/or distribution restrictions contained in the licence will take precedence over the Guidelines.

For more information about course packs, contact the University BookStore.
Audiovisual Works and Fair Dealing

Faculty, instructors and staff may copy short excerpts of a copyright-protected audiovisual work and to communicate those short excerpts to students for research, private study and educational purposes, among other purposes. Audiovisual works include motion picture films, television programs and videos. It is permissible to reproduce a short excerpt using a video recording device (e.g., a camcorder), to record a short excerpt from a computer, television screen or projection. It is also permissible to use software that enables the copying of audiovisual-content when the source content has been lawfully accessed.

Musical Works and Sound Recordings and Fair Dealing

The UM Guidelines permit faculty members, instructors and staff to copy short excerpts of copyright-protected musical works (including musical scores and sheet music) and sound recordings and to communicate those short excerpts to students for research, private study and educational purposes, among other purposes.

It is permissible to reproduce a short excerpt of a sound recording when the source content has been lawfully accessed.

Evaluating the public domain status of musical works and sound recordings is complex. For assistance, contact the Copyright Office at um.copyright@umanitoba.ca or 204-474-9607.

Administrative Copying and Fair Dealing

Administrative copying includes copying copyright-protected works made for one of two purposes, namely, the development of a course of study, unit or program offered by the University, and the governance or administration of the University or of a faculty or department of the University.

A short excerpt of a copyright-protected work may be copied if the purpose of the copying is tied to education. An example is the making of a copy of a short extract of a copyright-protected work and emailing copies to members of a faculty or department committee for use in developing a course of study, unit or program to be offered by the University. Another example is the making of a short excerpt of a copyright-protected work for the purpose of training administrative staff.

Administrative copying of a short excerpt of a copyright-protected work that is made for the governance or administration of the University or a faculty or department of the University may be made. An example is the copying of a short excerpt of a copyright-protected work and providing the copies to members of the board of governors or to members of a faculty or department committee for governance or general administrative purposes relating to the operation of the University.

Students and Fair Dealing
Depending on the circumstances, a student may copy or communicate a short excerpt of a copyright-protected work under the Fair Dealing exemption of the Copyright Act without the permission of the copyright holder and without infringing copyright.

The University does not condone copyright infringement by students. Students who copy or communicate copyright-protected works should either be satisfied that copying or communicating the works falls within one of the exemptions in the Copyright Act or obtain permission from the copyright owner.

The University is not liable for any infringing copies made or communicated by students including such copies made or communicated using copiers or scanners made available by the University.

The University does not have control over students who post content to websites including to UM Learn or who attach content to emails including emails posted to UM Learn.

However, students who make or post infringing copies could face disciplinary action for academic misconduct. See the academic integrity website for more information.

For copyright information related to graduate students and their theses, see the Copyright Office website.

**Libraries and Fair Dealing**

**Document Delivery / Interlibrary Loan / Reserve**

The UM Copyright Guidelines apply to copying and communicating a short excerpt of a copyright-protected work for library processes such as document delivery, interlibrary loan and reserve. With certain safeguards in place, University Libraries may apply Fair Dealing or other Copyright Act exceptions in distributing material to patrons.

**Library Copiers and Scanners**

The University does not have control over students and other patrons who have access to photocopiers and scanners in the University Libraries. However, as a protection against copyright infringement by students and other library patrons, the University will post a notice in close proximity to photocopiers or scanners in the University Libraries advising that copyright law governs the making of copies and the communicating to the public by telecommunication of copyright-protected works, and that the University is not responsible for infringing copies made by users of the photocopier or scanner.

**Other Copyright Act Exemptions**

Should the desired copying exceed Fair Dealing allowances, consider other exemptions in the Copyright Act as noted below.

**Exemption for Works Available through the Internet**

Section 30.04(1) of the Copyright Act provides an exemption from copyright infringement for copying of a copyright-protected work that is available through the Internet. The exemption applies to persons under the employ of an educational institution, and is subject to the following conditions:
1. The copy must mention the source of the work and the name of the author, performer, maker and/or broadcaster of the work;

2. The copyright-protected work or the Internet site where it is posted must not be protected by a digital lock (also known as a technical protection measure or TPM) that either restricts access to the work or restricts copying, communicating or performing in public the work;

3. There is no clearly visible notice posted on the Internet site or on the work that prohibits the copying (note that the use of the copyright symbol by itself does not prevent one from applying this exemption); and

4. The person making the copy must not be aware that the work was made available through the Internet without the consent of the copyright holder.

Using the exemption under section 30.04(1) allows for an entire work to be copied or communicated.

Exemption for Displaying a Work

Section 29.4(1) of the Copyright Act states that it is not an infringement of copyright to reproduce a copyright-protected work, or do any other necessary act, in order to display the work on the premises of an educational institution for the purpose of education or training. This exemption extends beyond Fair Dealing in that the exemption permits the display of more than a short excerpt of a work.

Except for the making of a manual reproduction (e.g., on a white board), the exemption does not apply if copies of the work are available for sale in Canada within a reasonable time, at a reasonable price, and the copies can be located with reasonable effort.

Exemption for a Lesson

Section 30.01 of the Copyright Act provides an exemption for a lesson, namely a presentation (such as PowerPoint) containing copyright-protected material presented in a classroom.

For this exemption to apply, copies of the lesson must be distributed via a learning management system (such as UM Learn) and must be destroyed within 30 days after the day the students in the course of study receive their final course evaluation.

As this means that all copies of a presentation stored in UM Learn must be destroyed (and not merely rendered inaccessible to students), faculty members and instructors may prefer to apply Fair Dealing rather than this exemption for a lesson and only include a short excerpt in a classroom presentation.

Relationship between Exemptions: Fair Dealing, Displaying a Work, Lesson

Fair Dealing and the exemptions for displaying a work and a lesson are distinct and separate exemptions under the Copyright Act. Fair Dealing may apply in circumstances in which the latter two exemptions also apply.
For example, a faculty member may post to UM Learn a classroom presentation which includes a short excerpt of a copyright-protected work. The faculty member can rely on Fair Dealing for posting the classroom presentation rather than the exemption for a lesson and not have to destroy the classroom presentation within the 30-day period as required by the exemption for a lesson. If, on the other hand, the classroom presentation contains more than a short excerpt of a copyright-protected work, the faculty member cannot rely on Fair Dealing and instead must ensure that the exemption for a lesson applies and that the classroom presentation is destroyed within the 30-day period as required. Because of the destruction requirement, a faculty member may prefer applying Fair Dealing rather than the exemption for a lesson and only include a short excerpt in a classroom presentation that is to be posted to a course website.

As another example, teaching staff may display in a classroom more than a fair amount. However, no more than a fair amount may be posted to UM Learn. To avoid infringement, teaching staff may choose to remove from the presentation slides copyrighted content that exceeds Fair Dealing before uploading the presentation to UM Learn.

Exemption for Performing an Audiovisual Work, a Musical Work, or a Sound Recording

Faculty members, instructors and staff can rely on the exemption in section 29.5 of the Copyright Act for the performance in public of an audiovisual work, musical work, or sound recording on the premises of the University for educational or training purposes before an audience consisting primarily of students, instructors, or any person who is directly responsible for setting curriculum. The work must either not be an infringing copy or the person responsible for the performance must have no reasonable grounds to believe that it is an infringing copy.

The exemption in section 29.5 applies to performing all or any part of a work.

Exemption for Persons with Perceptual Disabilities

Section 32 of the Copyright Act permits a person with a perceptual disability, or a person acting at the request of such a person or for a non-profit organization acting for the benefit of such a person to

1. Make a copy or sound recording of a literary, musical, artistic or dramatic work, other than a cinematographic work, in a format specially designed for persons with a perceptual disability;

2. Translate, adapt or reproduce in sign language a literary or dramatic work, other than a cinematographic work, in a format specially designed for persons with a perceptual disability; or

3. Perform in public a literary or dramatic work, other than a cinematographic work, in sign language, either live or in a format specially designed for persons with a perceptual disability.

The exemption does not authorize the making of a large print book and does not apply where the work or sound recording is commercially available in a format specially designed to meet the needs of any person with a perceptual disability.
Persons with perceptual disabilities may contact the UM Libraries or Student Accessibility Services for information about services and equipment.

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More Copyright Act Exemptions

The Copyright Act includes a number of other copyright exemptions. These include, among others, reproducing a work required for a test or examination, time-shifting, format-shifting, and creating non-commercial user-generated content. For more information about these exemptions, contact the Copyright Office at um.copyright@umanitoba.ca or 204-474-9607.

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Public Domain, Creative Commons, Open Access

In general, the term of copyright lasts for the life of the author, the remainder of the calendar year in which the author died, and a period of 50 years after the death of the author. When the copyright term expires, the work enters the public domain. A work in the public domain is no longer protected by copyright and can be copied, distributed, communicated, adapted, modified, etc. without permission. The copyright term for some types of works (such as anonymous works, photographs, movies and sound recordings) varies. All works are subject to Canadian copyright law when used in Canada, even works created outside the country. Works used outside of Canada may be subject to other legal jurisdictions. Examples of online resources which list public domain works include Gutenberg Canada, Project Gutenberg and Wikipedia.

Creative Commons is an organization that offers pre-conceived licences that content creators can choose to adopt, enabling them to share their works freely with clear licence terms for future users. Creators can choose from a selection of copyright licences, some with very liberal terms of use and others with restrictions regarding adapting, cropping, commercial use, etc. All resources with a Creative Commons licence may be shared freely for non-commercial purposes without permission, provided attribution is given. See the Creative Commons website for more details.

Open access is a model of scholarly communication that improves access to research. Open access research is made available online without access restrictions and with limited usage restrictions. Visit the SPARC website for more details about open access.

For more information about the public domain, Creative Commons or Open Access, contact the Copyright Office at um.copyright@umanitoba.ca or 204-474-9607.

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Government Works

Canadian federal or Crown works, as well as some provincial legal publications, may be used for non-commercial purposes without permission, regardless of the amount used.

Though most federal works can be used, an exception to this rule is consultant reports, which are copyrighted by the consultant.
For provincial or municipal works, apply the Fair Dealing provision or other exemptions from the Copyright Act.

For more information about government works, contact the Copyright Office at um.copyright@umanitoba.ca or 204-474-9607.

More Copyright Information

For more information about copyright, contact the Copyright Office at Office at um.copyright@umanitoba.ca or 204-474-9607.