



Copyright Guidelines for UNBC Faculty, Staff and Students

Revised March 2013

Table of Contents

| | |
|---|-----------|
| Introduction | 3 |
| Your Copyright Obligations | 3 |
| Flowchart: Copyright Guidelines for UNBC Faculty, Staff and Students | 4 |
| Steps to Determine Your Permission to Copy | 5 |
| 1. Is the work protected by copyright? | 5 |
| 2. Is there a Digital Lock protecting the work?..... | 5 |
| 3. Is copying of the work permitted under the <i>Copyright Act</i> ? | 5 |
| A. The Fair Dealing Exception: | 5 |
| B. Educational Exceptions under the <i>Copyright Act</i> | 7 |
| C. Other Relevant Exceptions under the <i>Copyright Act</i> | 8 |
| 4. Do you need to include the work in a course pack? | 9 |
| A. Print course packs: | 9 |
| B. Electronic course packs:..... | 9 |
| 5. Does UNBC have an existing license that allows you to copy the work? | 9 |
| 6. Do you wish to request consent directly from the copyright holder?..... | 10 |
| Conclusion | 10 |

These materials are adapted from materials developed and owned by The University of British Columbia (the “**UBC Materials**”), and are used with consent of The University of British Columbia (“**UBC**”). They are provided for informational purposes only and should not be relied upon as legal advice. UBC takes no responsibility or liability for any use of these materials, or the UBC Materials, including any changes or modifications made to the UBC Materials.

Introduction

UNBC and its faculty, staff and students are creators and consumers of various forms of intellectual property. As creators, we rely on the protections offered by intellectual property laws to ensure that our work is protected from improper use. As consumers of intellectual property, we are legally (and morally) obligated to respect the intellectual property rights of others. Copyright is an intellectual property right that is very important to UNBC faculty, staff and students.

Infringing copyright is a serious matter and UNBC requires each of its faculty, staff and students to comply with the [Copyright Act](#) of Canada. Because UNBC may be liable for the conduct of its faculty and staff, a small number of faculty or staff who fail to comply with copyright law may result in UNBC being liable for copyright fees and damages. Faculty, staff and students may also be personally liable for copyright infringement, and be responsible for payment of such fees and damages. This document provides a basic summary of the Canadian *Copyright Act*, and sets out UNBC's guidelines regarding copyright to help you understand what you can and cannot do with copyrighted works.

If, after reviewing these guidelines, you have any questions or concerns or wish to receive additional guidance, please contact libcopyright@unbc.ca.

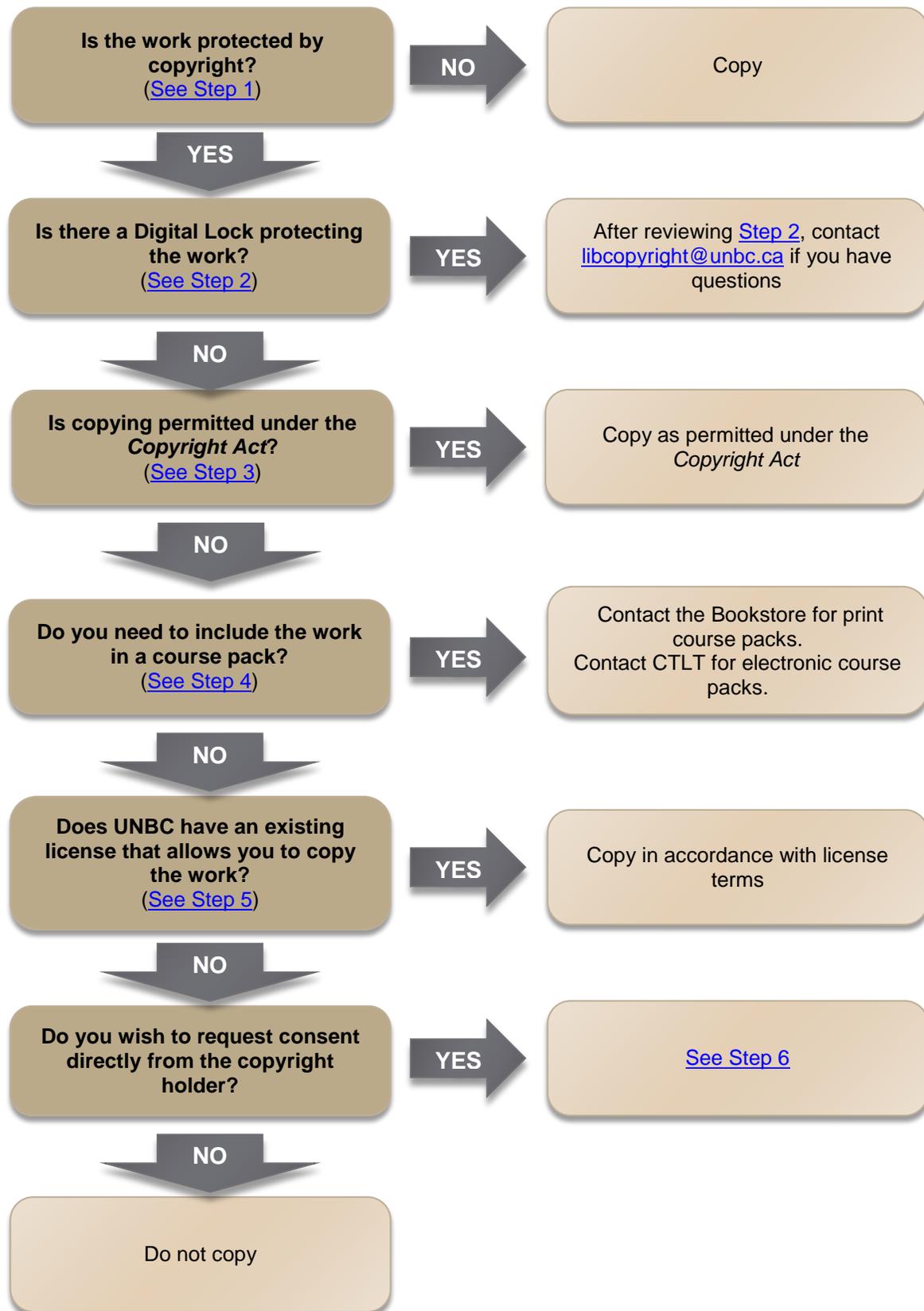
Your Copyright Obligations

Copyright is the sole and exclusive right of a copyright owner to produce, reproduce, perform, publish, adapt, translate and telecommunicate a work, and to control the circumstances in which others may do any of these things. Copyright owners grant permission to others through what are legally referred to as licenses.

Copyright law in Canada protects a wide range of works. If you wish to reproduce a substantial part of a copyrighted work, you may only copy the work if you have permission from the copyright owner or if your copying falls within one of the exceptions set out in the [Copyright Act](#) that allows for such copying. The [Copyright Act](#) provides exceptions for certain users, such as universities and persons acting under the authority of a university. These exceptions provide a balance between providing copyright owners with legal rights to control use of their works, and allowing users to access those works.

In November 2012, [Bill C-11, the Copyright Modernization Act](#) was brought into force. These legislative changes significantly update the *Copyright Act*, expand various educational exceptions and provide greater flexibility for UNBC faculty and staff to rely on these exceptions to reproduce works within the university environment.

Flowchart: Copyright Guidelines for UNBC Faculty, Staff and Students



Steps to Determine Your Permission to Copy

The flowchart above guides you through some questions you need to answer to determine whether you can copy specific works.

1. Is the work protected by copyright?

All original literary, dramatic, musical and artistic work, computer programs, translations and compilations of works are protected by copyright, unless the author(s) of the work died more than 50 years ago (note that translations or annotations of such works are also copyrighted). If in doubt, you should presume that the work is protected by copyright.

2. Is there a Digital Lock protecting the work?

A technology protection measure (commonly referred to as a TPM or Digital Lock) is any technology, device or component that controls or restricts the access to or copying of a work that is installed on the work, including technical barriers like passwords that prevent or restrict access to a work. The *Copyright Act* prohibits the circumvention of Digital Locks, unless it is done with the authority of the copyright owner. For example, if you have been provided with an authorized password or “key” to the Digital Lock, or login using your username and password to access works that are licensed by UNBC, then you can open or circumvent the Digital Lock to access the work. However, if you have obtained a password or key via unauthorized means, e.g. found the solution to breaking a digital lock published online, without consent from the copyright owner, then you cannot circumvent the Digital Lock to access the work. It is important to note that even if you may otherwise have been able to reproduce a work under one of the exceptions within the *Copyright Act* (including educational exceptions and fair dealing exceptions), if there is a Digital Lock on the work, you must not circumvent the Digital Lock to access the work, unless you are authorized by the copyright owner to do so.

The Digital Lock provisions of the *Copyright Act* are new and subject to interpretation, so there is still room for more legislative reform and consideration by the courts to address numerous questions and issues raised by these requirements.

3. Is copying of the work permitted under the *Copyright Act*?

Exceptions under the *Copyright Act* permit certain things to be done by educational institutions, or persons acting under the authority of an educational institution, that would otherwise infringe copyright. The “fair dealing exception” is one of such exceptions.

A. The Fair Dealing Exception:

The “Fair Dealing Exception” allows any person to use a copyrighted work for the purposes of research, private study, education, satire, parody, criticism, review or news reporting without the copyright owner’s permission. To qualify for the Fair Dealing Exception, two tests must be passed.

First, the “dealing” must be for an allowable purpose stated in the *Copyright Act*: research, private study, education, satire, parody, criticism, review or news reporting.

The second test is that the dealing must be “fair”. In landmark decisions in 2004 and 2012, the Supreme Court of Canada provided guidance as to what this test means. In its 2012 decision, the Supreme Court of Canada considered copying of short excerpts by teachers for class handouts, under the “research or private study” fair dealing purposes. The Court characterized

teachers as sharing a “symbiotic purpose with the student/user who is engaging in research or private study.” On this basis, the Court decided that the Fair Dealing Exception allows teachers to make copies of short excerpts of copyrighted works and distribute them to students as part of classroom instruction, without a prior request from a student, subject to appropriate conditions. The Supreme Court of Canada proposed the following criteria to help determine whether dealing is fair:

- the purpose of the dealing
- the character of the dealing
- the amount of the dealing
- the nature of the work
- available alternatives to the dealing
- the effect of the dealing on the work

The [Shades of Gray: 6 Point Fair Dealing Test](#) or Athabasca University’s [Fair Dealing Analysis Tool](#) can help you determine if your usage is fair.

[UNBC’s Fair Dealing Guidelines](#), based on a model by AUCC, ACCC and Grant MacEwan, provides specific “fair dealing” guidelines for copying published work in print or electronic format by staff, faculty members and students of UNBC.

There are also the following “personal use” fair dealing exceptions:

Non-commercial User-generated Content (aka ‘mash-up’ exception)

- An individual may, for non-commercial reasons, use a published work to create a new work provided that the individual had reasonable grounds to believe that the published work used did not infringe copyright, the individual mentions the source of the published work and the use of such published work does not have a substantial negative effect to the copyright holder of the published work. For example, this allows you to splice scenes from legally purchased movies or videos, for the purposes of creating a lecture.

Reproduction for Private Purposes (aka ‘form-shifting’ exception)

- An individual may reproduce, for a private purpose, any work, if the source copy was legally obtained and the individual does not circumvent an access Digital Lock (see above) in order to reproduce the work. For example, this allows you to copy a song purchased from iTunes from your computer onto a device, such as an iPod, or files from a legally purchased CD to your computer. This exception does not allow you to:
 - Copy songs onto a CD or mini-disk (or any other audio recording medium);
 - Give the reproduction away; or
 - Keep the reproduction if the original version is given away, rented or sold.

Fixing Signals and Recording Programs for Later Listening/Viewing (aka ‘time-shifting’ exception)

- An individual can fix a communication signal or copy a work, sound recording or performance being broadcast for the purpose of privately viewing it at a later time, provided that the signal was received legally, the individual does not circumvent an access Digital Lock in order to fix the signal or copy the work, only one recording is made and such recording is not given away. For example, this allows you to record a show on your PVR or other recording device to watch at a later time.

Backup Copies

- An individual can make a backup copy of a work to protect against the source copy being lost, damaged or otherwise rendered unusable, if the source work is legally obtained by the individual, the individual does not circumvent an access Digital Lock in order to backup the work, and the backup copy is not given away.

B. Educational Exceptions under the *Copyright Act*:

Educational institutions and persons acting under the authority of an educational institution are also allowed to do any of the following:

Reproduction of Canadian legislation

- reproduce enactments, consolidations of enactments of the Government of Canada, decisions and reasons for decisions of federally-constituted courts and administrative tribunals, provided due diligence is exercised in ensuring the accuracy of the reproduced materials and the reproduction is not represented as an official version;

Reproduction for display:

- reproduce a work, or do any other necessary act, in order to display the work for education or training purposes. However, this exception is not available, except in the case of manual reproduction (e.g. onto a dry-erase board, flip chart or other surface intended for displaying handwritten material) for works that may be located with reasonable effort, are commercially available on the Canadian market within a reasonable time and for a reasonable price, in a medium appropriate for education or training purposes;

Reproduction for tests or exams:

- reproduce, translate or perform a work in public on the premises of UNBC, as required for a test or examination, provided the work is not already available in a commercial format;
- communicate a work by telecommunication to the public situated on the premises of UNBC, as required for a test or examination, provided the work is not already available in a commercial format;

Performances, Sound Recordings and Telecommunication:

- carry out the following performances, if performed on UNBC premises for educational or training purposes and not for profit, before an audience consisting primarily of students, faculty or any person who is directly responsible for setting a curriculum for UNBC:
 - the live performance in public, primarily by UNBC students, of a work;
 - the performance in public of a sound recording or of a work or performer's performance that is embodied in a sound recording;
 - the performance in public of a work at the time of its communication to the public by telecommunication; and/or
 - the performance in public of a cinematographic work.
- Each of the above performances is only allowed if it is not based on an infringing copy of the work.

Broadcasts:

- make a single copy of a work at the time that it is communicated to the public by telecommunication and keep the copy for up to thirty days to decide whether to perform the copy for educational or training purposes;

Reproduction for Lessons by Telecommunication:

- communicate a lesson (including tests or exams) to the students enrolled in that specific course, by telecommunication for education or training purposes, and record such lessons. The student can also make a copy of such telecommunicated lesson to be viewed or listened to at a later time, provided that:
 - the student and the institution must destroy the recording or copy within 30 days after receipt by students of their final course evaluations;
 - the institution must take reasonable measures to limit the audience to students only, and to prevent the students from fixing, reproducing or communicating such lessons except as permitted under this exception.

- The recordings cannot be sold or distributed widely (beyond the audience of students enrolled in the class).

Work Available through the Internet:

- reproduce, communicate by telecommunication and perform for an audience consisting primarily of UNBC students or other persons acting under UNBC's authority, for educational or training purposes, works or other subject matter that is available through the Internet, unless:
 - the works are protected by a Digital Lock that restricts access to the work or other subject matter or to the website;
 - a clearly visible notice (and not merely the copyright symbol alone) prohibiting such act is posted on the website or on the work or other subject matter itself; or
 - the educational institution or person acting under its authority knows or should have known that the works were made available on the Internet without consent of the copyright owner;
- and the following must be mentioned in respect of the work:
 - the source; and
 - name of author, performer, maker or broadcaster (if provided in the source).

News and Commentary:

- make, at the time of its communication to the public by telecommunication, a single copy of a news program or a news commentary program, excluding documentaries, for the purposes of performing the copy for the students of UNBC for educational or training purposes; and
- perform the copy in public, at any time or times within one year after the making of such copy, before an audience consisting primarily of students of UNBC on its premises for educational or training purposes.

Educational institutions relying on this exception no longer have to pay royalties, destroy copies of news or commentary programs after one year, or keep records of the copies made of news or commentary programs.

Reproduction for Persons with Perceptual Disabilities:

- copy an entire work (other than a cinematographic work) onto an alternative format including translation, adaptation and performance in public (except the making of a large-print book) for the purpose of serving students with perceptual disabilities as long as such an adaptation is not already commercially available in that format.

C. Other Relevant Exceptions under the *Copyright Act*:

The following are other exceptions under the *Copyright Act* that apply generally, but are relevant to educational institutions and persons acting under the authority of an educational institution.

Computer Programs:

If you own a copy of the computer program that is authorized by the owner of the copyright, or has a license to use a copy of the computer program, you may:

- reproduce the copy by adapting, modifying or converting it, or translating it into another computer language, if you prove that the reproduced copy:
 - is essential for the compatibility of the computer program with a particular computer;
 - is solely for your own use; and
 - was destroyed immediately after you ceased to be the owner of the copy of the computer program or to have a license to use it;
- reproduce for backup purposes the copy or a reproduced copy referred to above if you prove that the reproduction for backup purposes was destroyed immediately after you

- ceased to be the owner of the copy of the computer program or to have a license to use it; and/or
- reproduce the copy for the sole purpose of obtaining information so you can make the program and any other computer program interoperable.

Encryption Research, Security and Temporary Reproductions for Technological Processes:

- reproduce a work or other subject matter for the purposes of encryption research if:
 - it would not be practical to carry out the research without making the copy;
 - you have lawfully obtained the work or other subject matter; and
 - you have informed the owner of the copyright of the work or other subject matter;
- reproduce a work or other subject matter for the sole purpose, with the consent of the owner or administrator of a computer, computer system or computer network, of assessing the vulnerability of the computer, system or network or of correcting any security flaws; and/or
- make a reproduction of a work or other subject matter if such reproduction
 - forms an essential part of a technological process;
 - has the sole purpose of facilitating a use that is not an infringement of copyright; and exists only for the duration of a technological process.

4. Do you need to include the work in a course pack?

A. Print course packs:

We encourage you to model “green” teaching practices and consider an electronic course pack through a Blackboard course shell as an alternative to print course packs.

For further information about print course packs, contact Mardeana Berg at (250) 960-6436 (bergm@unbc.ca) or Cyndie Yule at (250) 960-6422 (yule@unbc.ca).

B. Electronic course packs:

Faculty at UNBC can use Blackboard to offer class resources and assignments to students as well as conduct online courses. More information about Blackboard can be found at <http://elearning.unbc.ca/doku.php>.

For more information about Blackboard, contact CTLT at (250) 960-6509 or ctlit@unbc.ca.

5. Does UNBC have an existing license that allows you to copy the work?

UNBC Library has obtained permission for faculty and staff to copy works under various license agreements between UNBC and publishers, publisher representatives, authors and copyright holders. The licenses for the Library’s online subscription databases give faculty and students access to millions of copyrighted articles and other works. The [Copyright website](http://libguides.unbc.ca/copyright) at <http://libguides.unbc.ca/copyright> will give you information on how to check the Terms and Conditions of the Library’s subscription databases as well as other useful information including a booklet on [how to create persistent links to UNBC licensed content](#) and a [Copyright FAQ](#).

If you need assistance or have questions or concerns, contact the Library Assistant – Copyright at (250) 960-6057 or libcopyright@unbc.ca.

6. Do you wish to request consent directly from the copyright holder?

If copying of a work is not permitted through any of the above means you should consider whether another work (for which UNBC already has a license) would be an acceptable alternative. If not, and if you still wish to use the work, the Library Assistant – Copyright can assist you in seeking the permission of the copyright owner. These permissions need to be sought on a case-by-case basis, and there is no obligation for the copyright owner to grant your request. If the copyright owner agrees to your request, the permission to copy the work will generally come by way of a one-off transaction license agreement between UNBC and the copyright owner. Please note that obtaining permissions from copyright owners may take 6-8 weeks. As such, it is recommended that you submit copyright clearance requests as soon as possible. If you require copyright cleared for a specific reading, please use the form at <https://library.unbc.ca/about/general-contacts/contact-copyright-clearance/>

For assistance with seeking permission from a copyright owner, or if you have any other questions about obtaining a copyright permission for a particular copyrighted work, please contact the Library Assistant – Copyright at (250) 960-6057 or libcopyright@unbc.ca.

Conclusion

This document is an overview and not a comprehensive summary of the copyright laws of Canada. For example, there are additional exceptions available to libraries (including university libraries) under the *Copyright Act*. Future court decisions and amendments to legislation will affect the scope of these exceptions. UNBC may also revise and update the Fair Dealing Guidelines and other documents from time to time.

If, after reviewing these guidelines, you have any questions or concerns about your obligations under copyright law or these guidelines, or wish to receive additional guidance, please refer to the [Copyright FAQ](#) or contact the Library Assistant – Copyright at (250) 960-6057 or libcopyright@unbc.ca.