

Copyright Basics

The purpose of this article is to introduce you to the basics of copyright. The topics include: what copyright is and what it protects; the rights of copyright owners; and user rights, which are exceptions to owners' rights.

Copyright

Copyright law is the responsibility of the federal government and the law is housed in the Copyright Act. The Act attempts to balance the interests of creators with those of users of copyrighted works. The rights of creators, known as authors in the Act, are set out in the opening sections of the Act. These sections are followed by sections which are legally termed exceptions but are popularly known as user rights. The best known of the user rights is fair dealing and it and other user rights will be discussed later in this document.

The Copyright Act gives rights to creators over their works. Creators can subsequently assign any of those rights to another body like a publisher or record company which then becomes the owner of the assigned rights. In the course of this article the expressions 'creator rights' and 'owner rights' will be used interchangeably, but it is important to remember that in most instances the Creator of a work is the first owner of copyright. Where the creator of a work is employed by another body, such as a business or a University, the copyright in that work is owned by the employer, in the absence of any contractual language to the contrary. UBC faculty members, for example, own copyright in their created teaching materials even though they are employed by the University.

When questions arise about the appropriate use of copyright-protected works, it is the owner of the copyright who seeks to safeguard the copyright. Copyright protects "original expressions". The idea of originality has a specific meaning in copyright: it starts with the concept that the work must be original to the author and not simply a copy of another's work. To qualify as original, a creator must exhibit some amount of "skill and judgment," itself the product of an intellectual effort in the final work, to quote the Supreme Court of Canada.

Expression in the context of copyright means that the original work has some concrete form or product. This is referred to as fixation of the work. The key thing to keep in mind is that the idea or concept that is embodied in the work need not be unique; Rather, the expression of the idea is the key to originality where an author has expressed an idea anew, to quote one authority.

Creator Rights

While copyright is certainly the right to copy it also includes several other rights such as the right to produce, reproduce, perform, to communicate, publish, adapt, or translate the work. It is worth noting that in many cases a creator will assign these rights to someone else if, for example, they want to publish their work with a publishing house, or if they want their work translated into another language. Particularly in the academic context, it is common for authors to assign their copyright to a publisher on the signing of a publication agreement.

It should be noted that copyright protects the work or any substantial part of it. When a user wants to copy or otherwise use an insubstantial part of the work, that part is not protected by copyright. Determining what constitutes a substantial part of the work requires both a quantitative and qualitative analysis.

It is a popular myth that a work is not copyrighted until it has the copyright symbol prominently displayed on it. This is not the case: once a work is fixed in an expression it automatically enjoys copyright.

A second popular myth is that a creator or owner of copyright must register his work with a public body like the Copyright



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Board of Canada: this too is false. There are reasons to register one's work with such a body, especially where an owner wishes to take someone who has used his work without permission to court. In such cases, registration may serve to prove ownership.

The term of copyright protection in Canada is usually the life of the author plus fifty years. There are variations on this term depending on the types of works it is applied to. For example, copyright in sound recordings lasts for seventy years from the first publication of the work, or one hundred years from the first fixation of the work. Terms of copyright protection vary according to jurisdictions. In the United States, for example, the term of copyright is life of the author plus 70 years and the same is true in countries that are members of the European Union.

Copyright Infringement

All of the rights encompassed under copyright are the sole rights of the copyright owner. Any user who does something that only the copyright owner is entitled to do without permission is infringing copyright. This article earlier mentioned user rights. As noted then, user rights are called exceptions to infringement in the Copyright Act because otherwise the uses made would be considered infringement.

Copyright infringement can result in civil or criminal penalties, the payment of damages, fines etc., although serious penalties are usually reserved for piracy for-profit activities and recent changes to the Copyright Act have limited damages of \$5,000 for all non-commercial infringements. Usually the party who commits infringement is held liable although it is important to remember that willful ignorance is not a defense.

For example, if you download a YouTube clip of a movie that has obviously been placed there as a result of an infringement you can still be liable. Copyright does not apply to all intellectual property. In general, it does not protect factual information, titles of works, short word combinations, names, characters, slogans, themes, plots or ideas. There are instances however, where copying essential elements of the plot, characters and themes lead to a finding of infringement. It is important to note that while these outputs are not protected by copyright, they may still be protected by other forms of intellectual property such as trade mark.

While many of these non-copyrightable terms are easily understood, take a minute to examine the expression, 'ideas'. It is not possible to copyright an idea, even one that is spoken, if it is not fixed. Once fixed in a material form, an idea becomes the expression of an idea and that is copyrightable. In copyright talk this is referred to as the "idea expression dichotomy".

Finally, as previously mentioned, any work that has entered into the [public domain](#) after copyright has expired is no longer protected by copyright and may be copied freely. Occasionally, creators may also bequeath their work to the public domain prior to the expiration of their copyright. The US federal government for example passes all of its published works into the public domain upon publication. While copyright is meant to protect creators and their works, it also seeks to balance creator rights with user rights.



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User Rights & Fair Dealing

Fair dealing is the heart of what are known as user rights in copyright. It is formally known as an exception to copyright. In the US, the concept is known as fair use. Fair dealing means that in spite of such a use being illegal in other circumstances, the use is legal when it meets the requirements of fair dealing.

To apply a fair dealing to a copying activity you must find a purpose for that copying that corresponds to one of the purposes set out in the law. These are: research; private study; education; parody and satire. A second set of exceptions are confined to criticism and review, while a third set relies upon news reporting. Like many other things in the Copyright Act, there is no definition of what constitutes a fair dealing or when a fair dealing is attained. Findings of fair dealings are determined in the particular context of the copying use. What may be considered fair in one instance may not be fair in a similar but not exactly the same other instance. For more information concerning fair dealing at UBC, refer to the UBC copyright website's [Fair Dealing Requirements for UBC Faculty and Staff](#) and [Fair Dealing in Practice](#) guides.

Educational exceptions to infringement are another set of user rights. They permit use of material in the classroom that would otherwise not be permissible. Their application in an open environment is severely limited because they can only be used where the presentation of the content takes place within the premises of an educational institution. Were part of the OERR restricted to enrolled students in a UBC course the content could be use provided the other restrictions, including a legitimate copy of the work is being used, there was no breaking of a technological protection measure to get access to it and the object or the site from which it has taken did not make a positive statement prohibiting the use, are observed. Where the content will be widely available the education exception loses its force.

Useful Links

For more information please refer to the following Copyright at UBC website resources:

- [Copyright at UBC](#)
- [Basics FAQ](#)
- [Copyright Requirements for Faculty and Staff](#)
- [Copyright Guidelines for UBC Faculty, Students and Staff](#)
- [Fair Dealing Requirements for UBC Faculty and Staff](#)
- [Fair Dealing in Practice](#)

