

Concordia University Libraries' Copyright Guide

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Table of contents

CONCORDIA UNIVERSITY LIBRARIES' COPYRIGHT GUIDE	1
WHAT IS COPYRIGHT AND HOW DOES IT WORK?	1
IDEAS, FACTS AND ORIGINALITY.....	1
DIGITAL WORKS.....	1
DURATION OF COPYRIGHT	1
PUBLIC DOMAIN	1
USING COPYRIGHTED WORKS	1
INSUBSTANTIAL/SUBSTANTIAL	2
FAIR DEALING	2
FAIR DEALING (CANADA) VS. FAIR USE (U.S.)	2
EDUCATIONAL EXCEPTIONS.....	3
LIBRARIES, MUSEUMS AND ARCHIVES EXCEPTIONS	3
EXCEPTION FOR PERSONS WITH PERCEPTUAL DISABILITIES	3
LICENCES	3
CREATOR'S RIGHTS FOR PUBLISHED WORKS.....	4
TEXT (PRINT AND ELECTRONIC).....	4
COPYING OR SCANNING FOR PERSONAL USE	4
PHOTOCOPIES FOR CLASSROOM USE	4
DIGITAL DISTRIBUTION: EMAIL AND INTERNET	5
<i>Email</i>	5
<i>Internet</i>	5
CITING AND QUOTING.....	5
VIDEOS AND DVDS	5
PUBLIC PERFORMANCES OF VIDEOS	6
VIDEOS/DVDS FROM CONCORDIA LIBRARIES.....	6
VIDEOS/DVDS FROM VISUAL MEDIA RESOURCES (FACULTY OF FINE ARTS).....	6
VIDEOS/DVDS FROM MY LOCAL VIDEO STORE.....	7
VIDEOS/DVDS I TAPE AT HOME	7
COPYING COMPLETE WORKS.....	7
USING CLIPS IN YOUR OWN WORK.....	7
ONLINE VIDEOS AND OTHER MEDIA	7
EXCEPTIONS FOR EXAMINATIONS.....	7
RADIO AND TELEVISION BROADCASTS	8
TAPING A NEWS PROGRAM OR NEWS COMMENTARY PROGRAM FOR THE PURPOSE OF SHOWING IN CLASS ..	8
TAPING A NON-NEWS PROGRAM	8
LIVE BROADCASTS IN THE CLASSROOM	8
LIVE RADIO AND TELEVISION PROGRAMS MAY BE SHOWN IN THE CLASSROOM WHILE BEING BROADCAST.	8
EXCEPTIONS FOR EXAMINATIONS.....	8
SOUND RECORDINGS	8
PLAYING A SOUND RECORDING IN CLASS.....	9
COPYING A SOUND RECORDING THAT INCLUDES A MUSICAL WORK.....	9
COPYING A SOUND RECORDING THAT DOES NOT INCLUDE A MUSICAL WORK	9
DISTRIBUTING A SOUND RECORDING	9
USING CLIPS, MODIFYING/SAMPLING/REMIXING	9
<i>Musical clips</i>	9

Non-musical clips..... 9

ADAPTATION, TRANSLATION AND PERFORMANCE10

ADAPTATION10

TRANSLATION10

PERFORMANCE10

STILL IMAGES10

MAKING DIGITAL COPIES OF IMAGES11

SHOWING DIGITAL IMAGES IN CLASSROOMS11

USING DIGITAL IMAGES IN A COURSE WEB SITE11

EXCEPTIONS FOR EXAMINATIONS.....11

USING IMAGES IN STUDENT PAPERS11

USING IMAGES IN YOUR OWN ART WORK11

USING IMAGES FROM THE ARTSTOR DATABASE12

USING IMAGES ON THE INTERNET12

USEFUL WEBSITES.....13

PURPOSE OF THIS GUIDE

The information in this guide is not meant to be legal advice.

The purpose of this guide is to assist faculty and students in making their own decisions based on a better understanding of their rights and responsibilities. This guide mostly addresses copyright in the context of research and education. It does not aim to provide final answers as to what can and cannot be legally done according to the Copyright Act.

Members of the Concordia University community should consult the University Policy on Copyright Compliance (SG-2). In case of doubt, please seek legal assistance.

For more information, see the list of useful websites (hyperlink) at the end.

What is copyright and how does it work?

In Canada, copyright is governed by the Copyright Act (R.S.C. 1985, c. C-42) which regulates the use and reproduction of intellectual and artistic creations.

Copyright protects works from being copied, performed or distributed without the permission of the copyright holder, usually the author or the creator of the work, and provides exceptions for special circumstances.

Copyright automatically applies to original works such as books, articles, videos, music, paintings, photographs, digital works, broadcasts and performances.

Ideas, facts and originality

Ideas and facts are not protected by copyright. Only works that are original and fixed are protected by copyright. A work is “fixed” when it is produced onto any media, like paper or within a digital file. A work is considered “original” when it is the product of the author’s own skill, judgment and creativity, has not been copied and demonstrates more than a trivial, mechanical level of skill and judgment.

For instance, statistical data on the Montreal population is not protected, but a table presenting these data in a specific way may be.

Digital Works

Although the Copyright Act was written before digital content was widely available, digital works such as CDs, DVDs, websites and other online documents and files are protected by copyright. Fair dealing and educational exceptions (hyperlink) apply to digital works just as they do for other types of documents. Library electronic resources, such as subscription databases and ejournal collections, are usually also regulated by licence agreements. (hyperlink).

Duration of copyright

The length of copyright is usually 50 years after the death of the creator. Some types of works such as sound recordings and some photographs and films may have a different length of copyright. After copyright expires, a work becomes part of the public domain and may be freely copied and distributed.

Public domain

Works that are not under copyright are part of the “public domain” and can be freely copied, distributed, adapted and performed without permission from the author or the payment of royalties.

Using copyrighted works

Before copying, adapting, distributing or performing a copyrighted work, consider if:

- you’re using an insubstantial or substantial part of the work
- what you want to do may fall under fair dealing

- there may be a specific exception in the Copyright Act that might apply
- the copyright holder has granted permission or issued a special licence

In addition, at Concordia University, the [*Policy on Copyright Compliance \(SG-2\)*](#) has specific rules for our community.

Insubstantial/Substantial

The Copyright Act (s.3) protects substantial parts of works as well as whole works.

Since 'substantial' is not defined in the Act, the quantity and importance of what is being copied must be evaluated. In deciding whether a part of a work is considered substantial, the whole work must be taken into account. A few sentences from a novel would probably be considered insubstantial but a single line from a poem might be essential to the work and be considered substantial.

Fair dealing

"Fair dealing" offers some exceptions to the Copyright Act's general prohibition on copying. Fair dealing allows limited and non-commercial copying for the purposes of research or private study, criticism, review, and news reporting.

Proportionality is important in considering if use of a work might be considered fair dealing. In the *CCH Canadian Ltd. v. Law Society of Upper Canada* [2004] decision, the Supreme Court proposed the following criteria for evaluating whether a 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 purpose of the use, the amount to be used and alternatives available have to be considered, and must outweigh the nature and the effect of the dealing on the work.

Everyone benefits from fair dealing. However, educational institutions, libraries, museums and archives have additional special provisions (s.29.4 to 30; s.30.2 to 30.4)

Fair dealing (Canada) vs. Fair use (U.S.)

In Canada, fair dealing as defined by the Copyright Act is more restrictive than the fair use provisions in the United States, particularly in regards to education and teaching. For example, in the United States, showing films or videos in a classroom without special permission or performance rights is permitted. In Canada, public performance rights must be acquired to show a video or film in a classroom. The United States also allows making copies of works for distribution in class. In Canada, it is forbidden to do so without special agreement or payment to the copyright owners, such as via the Copibec (link) licence. For additional information on the differences between fair dealing in

Canada and fair use in the United States, see the summary table prepared by the Association of Universities and Colleges of Canada. [\[link\]](#)

In Canada, teaching is not listed as an example of fair dealing and is only covered in the specific educational exceptions as outlined below.

Educational exceptions

(s. 29.4 to 29.9)

Under certain conditions, educational institutions or persons acting under their authority can make limited copies for instruction and examinations:

- Instructors can copy a work onto a board, flip chart or similar surface and project a work using an overhead projector or similar device. The projection must be on the school's premises for educational purposes only. Digital projectors are arguably covered by this section.
- For the purposes of an exam or test, instructors can reproduce, translate or perform a work when it is not commercially available in an appropriate medium.

Other educational exceptions are discussed in the sections covering translation and performance ([hyperlink](#)), broadcasting ([hyperlink](#)) and playing sound recordings ([hyperlink](#)) and images ([hyperlink](#)).

Libraries, museums and archives exceptions

Canadian Libraries, Archives and Museums benefit from exceptions that facilitate the delivery of print and electronic works. They may do anything that individuals may do for themselves as long as it is for private study, research, criticism or review (sections 30.1 to 30.4). For example, library personnel are allowed to make a copy of an article to be placed on course reserve for a faculty member.

Exception for persons with perceptual disabilities

The Copyright Act (s.32) allows copying of literary, musical, artistic or dramatic works, to create a document in a format specifically designed for persons with perceptual disabilities. This exception does not apply in cases where the work is commercially available in an appropriate format or for cinematographic works.

Licences

Licences are contracts that regulate the reproduction and use of works in addition to the requirements of the Copyright Act. Some licences impose further restrictions on the use and reproduction of works and some waive certain rights that are part of the Copyright Act. In the context of a university, faculty and students should know about the following types of licences:

- The Copibec licence with Quebec universities (CREPUQ) regulates the creation and distribution of course packs, which is the production of multiple copies of works for teaching. The licence specifies limitations on what can be reproduced

(such as number of pages, percentage of total work, type of work) and the payment of royalty fees. For more information on the licence, see the *Concordia Policy on Copyright Compliance*, section 6. For information on the creation of course packs, see the [Bookstore website](#).

- Most of the databases available through the library have licences that govern use and reproduction of their contents. For instance, some database licences allow sending full-text journal articles to oneself by email, others do not. Most of the licenses limit the usage of the database to non-commercial purposes. If you are uncertain about using one of the libraries' databases, please consult a librarian.

Creator's rights for published works

Works that you have created are also subject to copyright. Publishing agreements may assign or licence a broad range of rights to the publisher. The following Internet sites provide information about publisher policies or alternatives:

- SHERPA/RoMEO (<http://www.sherpa.ac.uk/romeo.php>): Provides a summary of publisher copyright policies and self-archiving;
- Scholarly Publishing and Academic Resources Coalition, or SPARC (<http://www.arl.org/sparc/>): information compiled by the Association of Research Libraries (note: this is an organization from the United-States – not all information is valid for Canada).

Creators who want to facilitate the dissemination of their works while preserving ownership rights should consider using one of the licences proposed by [Creative Commons](#).

Text (Print and Electronic)

Whether in print or digital form, text is protected by copyright. Most formats are protected, such as books, articles, websites and their components, as well as most types of works, such as poems, plays, novels or essays.

Copying or scanning for personal use

One may make a copy of a portion of a work if it is fair dealing or if a special exception in the Copyright Act permits it. Otherwise a special agreement must exist between the copyright holder and the user, such as through a licence agreement.

Just how much of a work can be copied, or what might be considered “fair” is not defined in the Copyright Act. For more information see the sections “Substantial/Insubstantial” and “Fair Dealing.”

Photocopies for classroom use

The Copibec licence ([link](#)) governs the creation of course packs, which are, technically, multiple copies of works. As well, this licence allows for making multiple copies of a work for free classroom distribution. The photocopies must not exceed the lesser of 25

pages or 10% of the total work. In addition, a full article can be copied, as well as a full chapter from a book, as long as it does not exceed 20% of a book. Note that not all publishers are represented by this licence. Verify the CREPUQ site for details ([link](#)). The publisher of the work must not be in the Copibec exclusion list.

It is important to understand that the Copibec licence does not apply to users' fair dealing rights.

Digital distribution: email and Internet

How much or how little one can deliver electronically to one or many colleagues, students or staff depends upon the fair dealing provisions of the Copyright Act.

Email

It is generally not advisable to send copyrighted works via email unless you own the right to do so. If you wish to share an electronic article, website or other electronic resource with others, it is preferable to provide a link to the source in your email, the web address or bibliographic reference. For example, if you wish to refer an article from an electronic journal provided by the Library to a colleague, a student or group of students at Concordia, send the link to the article, not the entire article. A colleague at another University may obtain the document from their home institution. If you wish to share a webpage, it is preferable to provide the link in the email as opposed to attaching the page to the body of your message.

Internet

Posting copyrighted text on a website may not constitute research or private study since this is a form of distribution. On the other hand, fair dealing allows criticism, review and news reporting, which may require posting text on the Internet. The quantity of text you post should be proportional to the amount of criticism, review and news reporting that is done and proper attribution must always be given to the original creator of the text.

It is preferable to provide links to the text rather than reproduce it on the Internet.

Citing and quoting

Proper citing of sources is essential in academic work. However, it is not part of copyright. For more information on citing and quoting material, consult [the Academic Code of Conduct](#) as well as "[Let's be honest: A guide to academic integrity](#)". Guides to citation styles (such as MLA, APA) are available on the [library website](#).

Videos and DVDs

Cinematographic works include "any works expressed by any process analogous to cinematography, whether or not accompanied by a soundtrack" (s. 2). The term video/DVD in this section refers to various storage formats for motion pictures, including VHS, beta and u-matic tape, as well as 16mm and 35mm films.

Canadian copyright on cinematographic works governs the right to:

- copy a work

- perform a work in public
- communicate a work to the public (e.g. broadcasting)

Works that are in the public domain ([link](#)) are not protected by copyright and can be used and copied freely. For dramatic cinematographic works (most feature films), copyright lasts for 50 years after the creator's death; for non-dramatic works (e.g. documentaries), copyright lasts for the remainder of the calendar year of publication plus 50 years. It can be difficult to determine who is the creator of a cinematographic work; the best way to find out who holds copyright and whether or not a title is in the public domain is to contact the production company, distributor or licensing agent. You may be able to find this information in the [Internet Movie Database](#).

Public Performances of Videos

Videos/DVDs cannot be shown in public places, including classrooms, without public performance rights (s. 29.7 (3)), which are granted by the person who owns the copyright. A "public place" is not defined specifically in the Copyright Act but is a place that is not a private home, so, a classroom or student union building are considered public. Even if the video is being shown for educational purposes, and no admission is being charged, you must secure public performance rights. This applies even if the video was purchased from an American company.

If you plan to charge admission to a public showing of a video, special rules may apply, and you should contact the copyright holder to confirm arrangements.

Videos may be obtained from a variety of sources, both on and off-campus. Public performance rights (the rights to show the film in public), are distributed at the title level, not according to which company sells or distributes the video/DVD. For example, just because a video was purchased from a particular company (even if it specializes in educational films) does not necessarily mean it will come with public performance rights – rights for each title must be investigated. The information below can help you find out whether videos and DVDs have public performance rights.

Videos/DVDs from Concordia Libraries

Many of the videos/DVDs in the Libraries are purchased with public performance rights, but not all. To see if a video/DVD has public performance rights, check the Library catalogue (CLUES) record, under "Terms of Use". "Public Performance Rights Obtained – Classroom Viewing Permitted" means that it can be shown in class or other public venue, as long as no admission fee is charged. "Personal Use Only" means that public performance rights have not been obtained and it should not be shown in class or other public venue. Older videos/DVDs may not have rights information in the CLUES record, so contact the [Periodicals and Media Services Desk](#) if you have questions.

Videos/DVDs from Visual Media Resources (Faculty of Fine Arts)

Most of the videos/DVDs in the Visual Media Resources collection are purchased with public performance rights. To determine if the video of interest has rights, contact [Visual Media Resources](#).

Videos/DVDs from my local video store

Videos/DVDs rented or purchased in a local retail store do not have public performance rights; they are licenced for home use only and should not be shown in class or other public venue.

Videos/DVDs I tape at home

Movies that you taped from your television or other source can only be used for private home viewing and cannot be shown in public.

Copying complete works

Videos/DVDs generally cannot be copied without written permission from the copyright holder. Exceptions to this are works that are in the public domain, works that allow copying under licence, or if the use falls under fair dealing ([link](#)).

Using clips in your own work

When using clips in one's own work, the following should be considered:

- Is your work for research or private study, criticism or review, or news reporting? If so, it may be fair dealing.
- Do you intend to show the work in public (this includes the classroom) or is it for your own private viewing? If the latter, then your use may be fair dealing.
- Are you using substantial clips from another person's work? If it is an insubstantial [[link to insubstantial](#)] part of a work, then the clip can be used.

Online Videos and Other Media

The Copyright Act was written before digital content was common and so does not address digital formats. However you can use the principles of the Act to determine how to proceed on issues relating to digital works.

Most online content will have a use agreement of some kind that must be consulted prior to showing in class, saving, or using in your own work. Even if the content is available freely on the Web, it is still covered by copyright and you may have to request permission to show it in class. For example, the [CBC has an FAQ](#) page for use of their digital content. For live television programs, see the section on Radio and Television Broadcasts. [[link within doc](#)]

Exceptions to this include digital content that is obtained by the Libraries, where a licence agreement has been negotiated.

Exceptions for Examinations

You can reproduce and perform a copyrighted work, on the premises of an educational institution, if it is for a test or examination and is not commercially available.

Radio and Television Broadcasts

Taping a news program or news commentary program for the purpose of showing in class

A single copy of a news program or news commentary program (excluding documentary programs) may be taped for replaying in the classroom for educational purposes for one year after the original broadcast.

After one year, the copy must be destroyed or royalties paid to copyright owner through the [Educational Rights Collective of Canada](#).

Records must be kept of all such recordings by the educational institution with information as to the date the recording was made, any rights clearance, and the date the recording was erased or that royalties were paid.

Taping a non-news program

A copy of any broadcast may be made and kept for 30 days to be evaluated for educational use. After 30 days, the broadcast must be destroyed or royalties paid. This evaluation copy may not be shown in class without payment of royalties to the copyright holder.

Live broadcasts in the classroom

Live radio and television programs may be shown in the classroom while being broadcast.

Exceptions for Examinations

You can reproduce and perform a copyrighted work, on the premises of an educational institution, if it is for a test or examination and is not commercially available.

Sound Recordings

A sound recording, according to the Canadian Copyright Act includes:

“a recording fixed in any material form, consisting of sounds, whether or not of a performance of a work, but excluding any soundtrack of a cinematographic work where it accompanies the cinematographic work”.

Sound recordings may have multiple copyright protections:

- Protection of the recording itself (CD, audiocassette) (held by producer of recording)
- Protection of the performance (held by performers on the recording)
- Protection of the music/lyrics (held by composers of music/lyrics)

Playing a sound recording in class

Section 29.5 of the Copyright Act allows the playing of a sound recording on the premises of the educational institution “for educational or training purposes and not for profit, before an audience consisting primarily of students of the educational institution.”

Audio broadcasts may not be copied and played later in class except under special conditions. <link to broadcasting section>

Copying a sound recording that includes a musical work

Copying a sound recording that includes a musical work for individual personal use onto a “blank audio recording medium” as defined by the Copyright Act is permitted. You cannot copy a sound recording for someone else or for any other purpose including selling/renting out, distributing, communicating to others, or performing the recording in public. The Copyright Act has established a system of levy fees on blank media for providing royalty payments to composers, performers and sound recording producers. (s.8). In Canada, the [Canadian Private Copyright Collective](#) is responsible for collecting and distributing private copying royalties.

Copying a sound recording that does not include a musical work

Aside from the special exceptions for news broadcasts <link to broadcasts section>, you cannot generally copy a sound recording that does not include a musical work.

Special exceptions exist for persons with perceptual disabilities for reproducing a sound recording in alternative formats.

Distributing a sound recording

Distributing a sound recording, such as making it digitally available through the web, making copies for students etc., requires the payment of royalty fees.

The [Neighbouring Rights Collective of Canada](#) collects and distributes royalties for distribution and/or broadcasting of sound recordings.

Using clips, modifying/sampling/remixing

Musical clips

Using clips of a musical sound recording generally requires copyright clearance from the copyright holders. In Canada, for musical recordings contact the [Canadian Musical Reproductive Rights Agency](#)

Non-musical clips

Using clips of a sound recording in another work generally requires copyright clearance from the copyright holders.

Some exceptions may apply under the fair use provisions. See “Using clips in your work” <link > and “Fair Dealing and Other Exceptions” <link >

Adaptation, translation and performance

Adaptations, performances and translations of works are subject to copyright (section 3 of the Copyright Act).

Adaptation

Adapting copyrighted material requires permission from the owner of the original work. Reproduction or performance of an adaptation may require the permission of both the owner of the rights for the original work, and of the rights' holder for the adapted work.

Translation

Permission to translate substantial portions of a work must be obtained from the owner of the original work. Translations also are considered original works and are protected by copyright. This is true even if the original work has become part of the public domain. Reproduction or performance of a translation may require the permission of both the owner of the rights for the original work, and owner of the rights for the adapted work.

Performance

A special exception (article 29.5), permits educational institutions to use copyrighted materials in order to:

- Stage a live performance in public (a play, a public reading, a concert, etc.), primarily by students of the educational institution
- Play a sound recording of a work or of a performer's performance that is embodied in a sound recording
- Play a live broadcast in public (television, radio, internet).

This exception applies:

- on the premises of an educational institution
- for educational or training purposes and not for profit
- before an audience consisting primarily of students of the educational institution

Still Images

Images of artistic and visual works covered by the Copyright Act include: paintings, drawings, maps, charts, plans, photographs, engravings, sculptures, works of artistic craftsmanship, architectural works, and compilations of artistic works. Copyright in general continues for 50 years following the year of the producer's death after which the work comes into the public domain.

Photographs have the following added conditions: commissioned photographs belong to the person or organization making the commission. Photographs are covered by copyright for 50 years after the photograph is taken.

Making digital copies of images

Although many images are already available in digital format from various sources, there are numerous images which are available only in paper or slide format. Such images which are covered by copyright can be scanned if they fall under the exceptions outlined in the following sections.

Showing digital images in classrooms

According to Section 29.4 of the Copyright Act, educators can copy a work to project an image of that copy using an overhead projector or similar device. It is arguable that a "similar device" includes data projectors (PowerPoint presentations). However, this exemption does not apply if the image is commercially available on the Canadian market and can be acquired within a reasonable time and for a reasonable price.

Images from commercial databases (ARTstor) for which the library has a licenced agreement can be used in classroom presentations.

Using digital images in a course web site

Generally, it is necessary to obtain permission to copy as well as distribute a copyright protected work on the Internet, unless it is from a licenced database. However, it is also arguable that images can be used under the following conditions:

- Using low resolution images or thumbnails which do not compete with the commercial interest of copyright owners
- Linking to images rather than posting them on a class web site
- Providing password protection

Exceptions for Examinations

You can reproduce copyrighted images for a test or examination given on the premises of an educational institution.

Using images in student papers

Fair dealing (Section 29.1) allows you to make copies of images that are copyright protected for the purposes of research, private study, criticism, and review.

Using images in your own art work

The Copyright Act protects substantial parts of works which implies that insubstantial parts of copyrighted images can be used. <link to Insubstantial/Substantial> However, there is no clear definition of what constitutes substantial or insubstantial. While some contemporary artists are proponents of using any images in the practice of appropriation art (see the Appropriation Art website <http://www.appropriationart.ca>), such derivative works do not clearly enjoy the benefit of fair dealing. For the viewpoint of CARFAC, Canadian Artist Representation/le Front des artistes canadiens, on this, see: <http://www.carfac.ca/news-en.php>

Using images from the ARTstor database

Images in ARTstor can be used for classroom instruction and related classroom activities, student assignments and research, research activities of faculty, public display or public performance as part of a noncommercial scholarly or education presentation, in research and dissertations. Uses of images not permitted by ARTstor include: commercial –such as scholarly publications available for purchase, public performances, as well as adaptation of images for derivative works.

Using images on the Internet

Although there are websites that allow free downloading of images, mostly for personal use only, many websites include copyrighted images. Permission to use images must be obtained from the copyright owner.

The following Canadian website, prepared by the 2Learn.ca Education Society, provides an overview of how to determine the copyright status of images on the Internet: <http://www.2learn.ca/copyright/images.html>

It covers such questions as:

- How to locate copyright statements on a website
- What to do if you can't find a copyright statement on a website
- Sample copyright statements for “free” images
- Sample copyright statements for limiting use of images
- Sample copyright statements for restricting use of images

Useful Websites

[Canadian Heritage, Copyright Policy Branch](http://www.pch.gc.ca/progs/ac-ca/progs/pda-cpb/)

<http://www.pch.gc.ca/progs/ac-ca/progs/pda-cpb/>[Canadian Musical Reproductive Rights Agency](http://www.pch.gc.ca/progs/ac-ca/progs/pda-cpb/Canadian_Musical_Reproductive_Rights_Agency)

<http://www.cmrra.ca>

[Canadian Private Copyright Collective.](http://www.cpcc.ca/)

<http://www.cpcc.ca/>

[Concordia University Policy on copyright compliance](http://secretariat.concordia.ca/policies/sg/en/SG-2.shtml)

<http://secretariat.concordia.ca/policies/sg/en/SG-2.shtml>

[Copyright Act](http://www.canlii.org/ca/sta/c-42/)

<http://www.canlii.org/ca/sta/c-42/>

[Canadian Library Association Copyright Information Centre](http://www.cla.ca/resources/copyright.htm)

<http://www.cla.ca/resources/copyright.htm>

The CLA provides summary information on the Copyright Act, regulations, bills to amend the Act and case law, as well as several links to more detailed analysis. Also available is the official CLA's position statement on copyright.

Digital Images and Copyright

<http://www.2learn.ca/copyright/images.html>

[Educational Rights Collective of Canada.](http://www.ercc.ca/)

<http://www.ercc.ca/>

[Faircopyright](http://www.faircopyright.ca/)

<http://www.faircopyright.ca/>

A resource for Canadians, especially teachers, students and creators. The home page is a blog on copyright. The site also promotes involvement in the copyright reform from a users' perspective.

[Industry Canada, Canadian Intellectual Property Office](http://opic.gc.ca/)

<http://opic.gc.ca/>

[Neighbouring Rights Collective of Canada](http://www.nrdv.ca/)

<http://www.nrdv.ca/>

[SHERPA/RoMEO](http://www.sherpa.ac.uk/romeo.php)

<http://www.sherpa.ac.uk/romeo.php>

Provides a summary of publisher copyright policies and self-archiving;

[SPARC: Scholarly Publishing and Academic Resources Coalition](http://www.arl.org/sparc)

<http://www.arl.org/sparc>

Information compiled by the Association of Research Libraries (note: this is an organization from the United-States – not all information is valid for Canada).