

10 Things You Should Know About ©opyright

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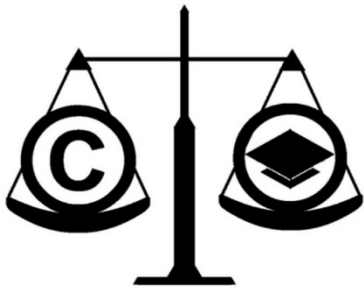
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Copyright Coordinator, Sheridan

1

- Balance Between Creators' Rights & Users' Rights



Copyright

Governed by **Copyright Act** [R.S.C., 1985, c. C-42], copyright is a balance between creators' rights and users' rights.

In *Théberge v Galerie d'Art du Petit Champlain Inc.*, Supreme Court of Canada said that copyright is:

“a balance between promoting the public interest in the encouragement and dissemination of works of the arts and intellect and obtaining a just reward for the creator.”

Creators' Rights (expire 50 years after the creator's death)	Exceptions to Copyright for Users
<p>Economic rights such as:</p> <ul style="list-style-type: none">- To reproduce, disseminate, publish, communicate, perform, translate, and make an adaptation from a work- To licence the economic rights to someone else <p>Moral rights (non-transferrable):</p> <ul style="list-style-type: none">- To be acknowledged for a work- To have the integrity of a work maintained- To have their reputation protected	<p>Some examples:</p> <ul style="list-style-type: none">- Fair dealing- Exceptions for educational institutions- Exceptions for libraries, archives and museums- Alternate format reproduction for persons with perceptual disabilities- Non-commercial user generated content exception- Copying for private uses- Exception for encryption research

Why is this relevant to libraries?

- Libraries work with both creators and users of copyrighted works
- Our profession requires us to monitor the balance
- Our work influences the balance



What is happening now that libraries should be aware of?

International pressure for Canada to adopt American style of copyright (i.e. Trans Pacific Partnership Agreement)





1

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2

- Fair Dealing

Fair dealing

- A user's right
- In the Copyright Act, Sections 29, 29.1, and 29.2:
*Fair dealing for the purpose of research, private study, education, parody, satire, criticism, review, or news reporting does not infringe copyright.**

*For the purpose of criticism, review or news reporting, the source and if available, the creator need to be mentioned.

How to evaluate fair dealing

A 2-step test:

- Purpose
- Fairness of the dealing, which depends on these 6 factors:



Adapted from [The Four "Beans"](#)

Fair Dealing Guidelines in the post-secondary and K-12 sectors

Instructors may copy **short excerpts** of copyrighted works.

A short excerpt is:

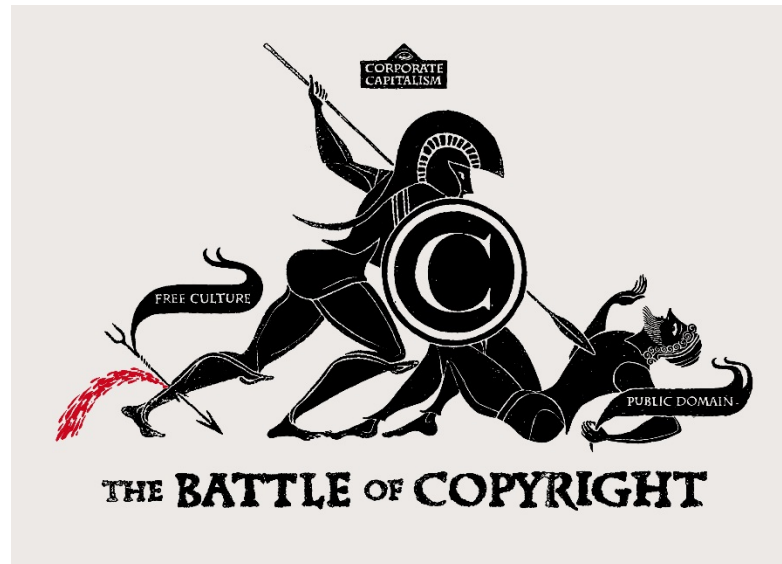
- Up to 10% of a copyright-protected work
- 1 chapter from a book
- 1 article from a magazine, journal or newspaper
- Entire image, chart or diagram from a source containing other illustrative works
- Entire poem or musical score from a source containing other poems or musical scores
- Entire article from an encyclopedia or dictionary

Why is this relevant to libraries?

- Fair dealing is available to everyone
- Some institutions are relying on fair dealing in the absence of an Access Copyright licence
- Some libraries are relying on fair dealing instead of other exceptions for certain uses
- Libraries may wish to negotiate fair dealing rights into the terms of licences (because it may otherwise not be in the licence).

What is happening now that libraries should be aware of?

- Risk of Fair Dealing Guidelines being interpreted as law
- Access Copyright's lawsuit against York University
- Fair dealing may be impacted by TPMs



[The Battle of Copyright](#)

1

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2

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3

- Exceptions for Educational Institutions

Exceptions for Educational Institutions



[Pixabay](#)

- Reproduction for Instruction (s. 29.4)
- Performances (s. 29.5)
- News and Commentary (s. 29.6)
- Reproduction of Broadcast (s. 29.7)
- Online Lessons (s. 30.01)
- Works available through the Internet (s. 30.04)

**Note that these exceptions apply only to non-profit, public educational institutions.*

Exceptions for Educational Institutions

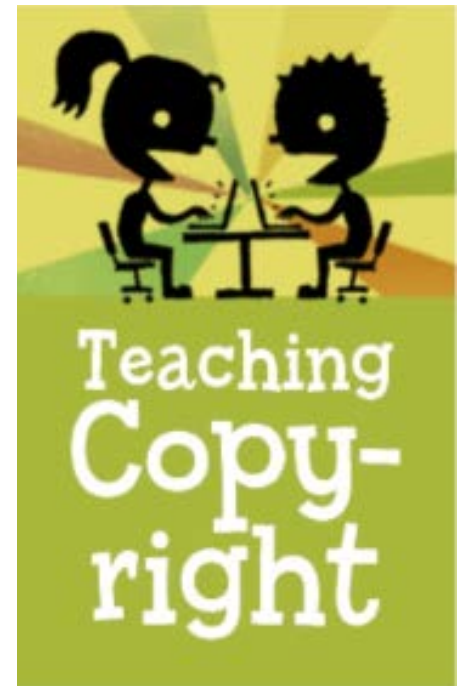
– Some Examples

Instructors and students may:

- Perform a video or sound recording on-campus for an audience consisting of primarily students and for non-profit, educational or training purposes. A legally acquired copy should be used – s. 29.5(b) & s. 29.5(d)
- Copy and use copyrighted works for educational or training purposes in online lessons and make a recording of the lessons for students to view or listen to at a later time. Materials need to be destroyed 30 days after students receive their final marks. – s. 30.01
- Copy and use publically accessible materials on the Web for educational use. Some restrictions apply. – s. 30.04

Why is this relevant to libraries?

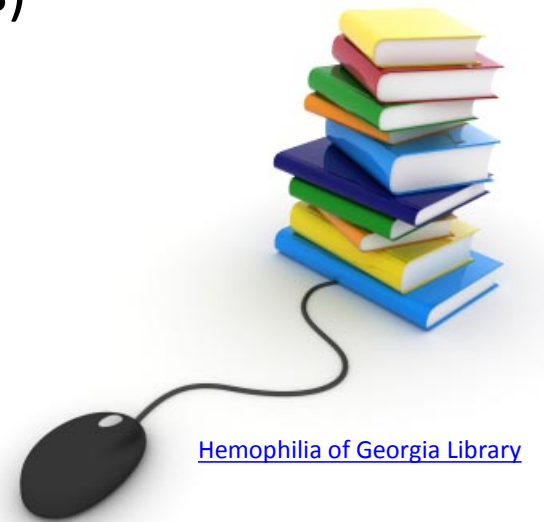
- Academic libraries play an important role in educating faculty and students about these exceptions
- Some changes to the educational exceptions due to the passage of Copyright Modernization Act in 2012



[Electronic Frontier Foundation](http://www.eff.org/)

What is happening now that libraries should be aware of?

- Some libraries choose to rely on fair dealing rather than the educational exceptions for certain uses
- Licences may restrict the use of the exceptions
- Libraries are providing various options for faculty and students to access academic and research materials (e.g., subscriptions to electronic content, open access resources and Creative Commons licensed materials)



1

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2

- Fair Dealing

3

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4

- Non-Commercial User Generated Content (Mash-Ups)

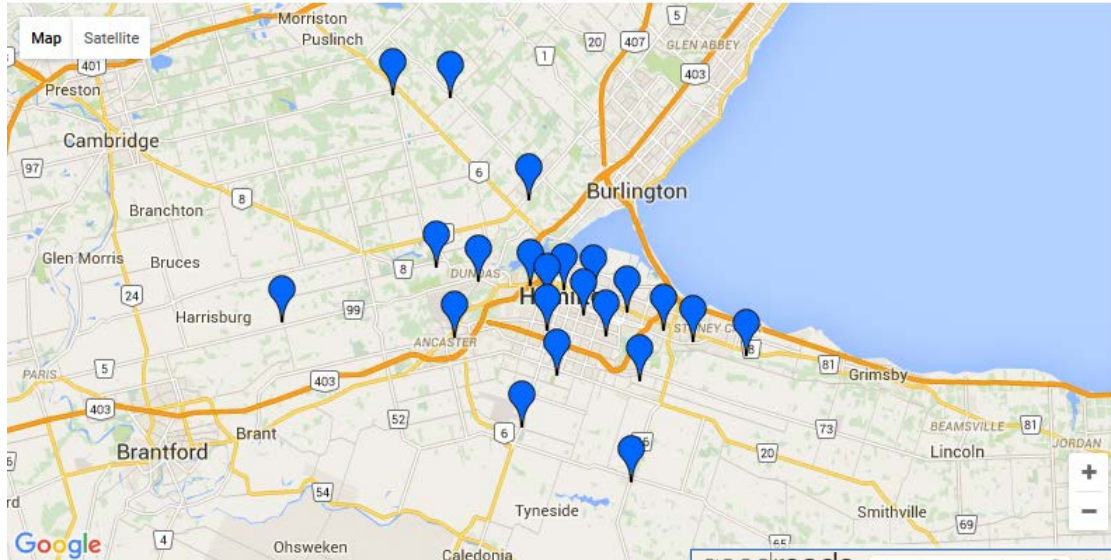
Non-commercial User-generated Content

- “**Youtube**” exception
- Mashups

29.21 (1) It is not an infringement of copyright for an **individual** to use an existing work or other subject-matter or copy of one, which has been published or otherwise made available to the public, in the creation of a new work or other subject-matter in which copyright subsists and for the individual — or, with the individual’s authorization, a member of their household — to use the new work or other subject-matter or to authorize an intermediary to disseminate it, if

- (a) non-commercial purposes;
- (b) the source of the existing work is mentioned, if reasonable;
- (c) reasonable grounds to believe that the existing work was not infringing copyright; and
- (d) the use does not have a substantial adverse effect, financial or otherwise.

Why is this relevant to libraries?



goodreads Title / Author / ISBN Home My Books Friends Recommendations Explore register sign in

See Your 2015 in Books

Chris > Books: checked-out (2561)

Search and add books Compare Books Settings Stats Print

bookshelves

- all (3316)
- read (1833)
- currently-reading (14)
- to-read (1166)
- reference (47)
- returned-without-reading (255)

- 1421-1737 (2)
- 1492-1559 (1)
- 1644-1795 (1)
- 17th-century (1)
- 1870-1940 (1)
- 1898-1951 (1)
- 18th-century (4)

cover	title	author	avg rating	rating	my rating	date read	date added
	Becoming a Ballerina: A Nutcracker Story	Friedman, Lise *	3.62	★★★★★	★★★★★	not set	Jan 06, 2016 view
	Raffi Christmas Treasury	Cavoukian, Raffi	3.60	★★★★★	★★★★★	not set	Jan 06, 2016 view
	Nutcracker	Hoffmann, E.T.A.	4.08	★★★★★	★★★★★	not set	Jan 06, 2016 view

What is happening now that libraries should be aware of?

- “more than two years after the provision took effect, YouTube and other online video providers have not adjusted their services to account for the Canadian law. In fact, a review of online video and social media sites finds that no one seems to account for the law within their terms and conditions or stated copyright policy.”

Michael Geist

1

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2

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3

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4

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5

- Exception For Persons With Perceptual Disabilities

Exception for Persons with Perceptual Disabilities

- Section 32.1, 32.01
- Print disability: visual, learning, physical
- Allows reproduction in accessible formats for all but video
- Large print not included
- Not allowed for titles commercially available (commercial audio)
- Exporting not allowed without permission
- TPM circumvention restrictive

Why is this relevant to libraries?

- AODA Requirements

Documents available upon request in an accessible format that takes into account the disability of the person making the request.

- Over 3 millions Canadians with a print disability

What is happening now that libraries should be aware of?

Marrakesh Treaty:

Support for Canadians with Print Disabilities Act

- Bill C-65
- Section 32.1 & 32.01 among others to be revised
- Large print included
- Exporting rules loosened extensively
- TPM circumvention restrictions loosened

1

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2

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3

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4

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5

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6

- **Library Exceptions**

Library Exceptions

- 30.1: Damaged and obsolete
- 30.2: Library acting as an authority (ILL)
- 30.21: Archiving
- 30.3: Machine Reproduction
- 30.5: LAC

Why is this relevant to libraries?

- Library's role in preserving local history
- Interlibrary loan and resource sharing
- Converting obsolete VHS tapes that have useful content to DVDs or digital files

What is happening now that libraries should be aware of?

- Some libraries are using fair dealing instead of s. 30.2(5) for providing digital copies to ILL patrons
- Academic libraries are shifting to having subscriptions of streaming videos, instead of converting old VHS tapes
- Digitization projects

1

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2

- Fair Dealing

3

- Exceptions for Educational Institutions

4

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5

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6

- Library Exceptions

7

- **Licensing Content**

Licensing Content – Public Libraries

- Physical  Digital
- Ownership  License
- No first sale rights
- Non-transferrable
- DRM (TPM)

Why is this relevant to libraries?

- High prices (cannibalization, friction)
- Short-term leases
- Shifted physical model to digital world
- Customer expectations

What is happening now that libraries should be aware of?

- Advocacy
- Transfer of license OK with publishers
- Penguin Random House change in pricing
- New models

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- 4 • Non-Commercial User Generated Content (Mash-Ups)
- 5 • Exception for Persons with Perceptual Disabilities
- 6 • Library Exceptions
- 7 • Licensing Content
- 8 • Technological Protection Measures (TPMs)



Technical Protection Measures

CONTENT PROTECTION SYSTEM:

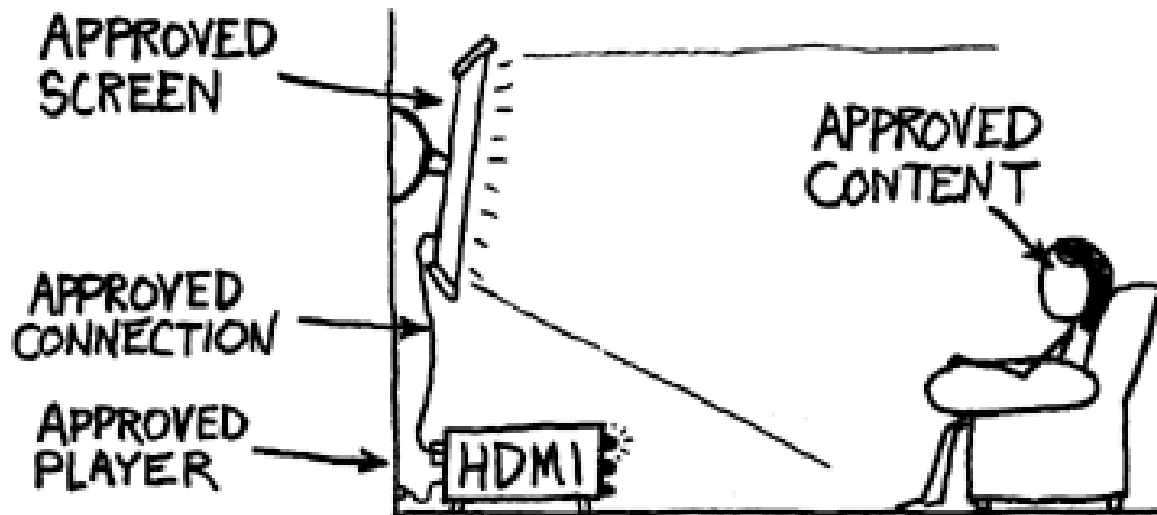


Image: [XKCD](#)

41.1 (1) No person shall

(a) circumvent a technological protection measure within the meaning of paragraph (a) of the definition ***technological protection measure*** in section 41;

(b) offer services to the public or provide services if

(i) the services are offered or provided primarily for the purposes of circumventing a technological protection measure,

(ii) the uses or purposes of those services are not commercially significant other than when they are offered or provided for the purposes of circumventing a technological protection measure, or

(iii) the person markets those services as being for the purposes of circumventing a technological protection measure or acts in concert with another person in order to market those services as being for those purposes; or

(c) manufacture, import, distribute, offer for sale or rental or provide — including by selling or renting — any technology, device or component if

(i) the technology, device or component is designed or produced primarily for the purposes of circumventing a technological protection measure,

(ii) the uses or purposes of the technology, device or component are not commercially significant other than when it is used for the purposes of circumventing a technological protection measure, or

(iii) the person markets the technology, device or component as being for the purposes of circumventing a technological protection measure or acts in concert with another person in order to market the technology, device or component as being for those purposes.

Why is it relevant to libraries?

- Ebooks
- Streaming Video
- Streaming Music
- Social Media

A significant loss of control for libraries and library users



Image: [Proposed Solution](#)

What's happening now?

The TPP and Digital Locks



Image: [Defective by Design](#)

1

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2

• Fair Dealing

3

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4

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5

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6

• Library Exceptions

7

• Licensing Content

8

• Technological Protection Measures (TPMs)

9

• **Notice and Notice**

Notice and Notice



Image: [Philippe Put](#)

41.25 (1) An owner of the copyright in a work or other subject-matter may send a notice of claimed infringement to a person who provides:

- (a) the means, in the course of providing services related to the operation of the Internet or another digital network, of telecommunication through which the electronic location that is the subject of the claim of infringement is connected to the Internet or another digital network;
- (b) for the purpose set out in subsection 31.1(4), the digital memory that is used for the electronic location to which the claim of infringement relates; or
- (c) an information location tool as defined in subsection 41.27(5).

41.26 (1) A person described in paragraph 41.25(1)(a) or (b) who receives a notice of claimed infringement that complies with subsection 41.25(2) shall, on being paid any fee that the person has lawfully charged for doing so,

- (a) as soon as feasible forward the notice electronically to the person to whom the electronic location identified by the location data specified in the notice belongs and inform the claimant of its forwarding or, if applicable, of the reason why it was not possible to forward it; and
- (b) retain records that will allow the identity of the person to whom the electronic location belongs to be determined, and do so for six months beginning on the day on which the notice of claimed infringement is received or, if the claimant commences proceedings relating to the claimed infringement and so notifies the person before the end of those six months, for one year after the day on which the person receives the notice of claimed infringement.

Why is it relevant for libraries?

- If you are managing your own internet service provider:
 - Must identify users and send notices
 - Must retain records
 - Requires manpower and time
- Answering questions regarding notices:
 - These notices are designed to provoke fear
 - Do not tell users what to do with the notices

What's happening now?

The TPP, DMCA and
Notice and
Takedown



Image: [Jon Aslund](#)

1 • Balance Between Creators' Rights & Users' Rights

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10 • **Public Domain**



The Public Domain

6 The term for which copyright shall subsist shall, except as otherwise expressly provided by this Act, be the life of the author, the remainder of the calendar year in which the author dies, and a period of fifty years following the end of that calendar year.

Why is it relevant to libraries?



Images: [NYPL - Prints from the Jerome Robbins Dance Division](#)



What's happening now?

The TPP and the copyright term extension



Other Presentations by OLA Copyright Users' Committee at the 2016 Super Conference

➤ **Licensing: What to Keep, What to Cancel and How to Negotiate the Deal**

Victoria Owen, Margaret Ann Wilkinson, and Jason Bird

Wed, Jan 27, 4 to 5:15 pm

MTCC 206F

➤ **Copyright Update**

Margaret Ann Wilkinson

Thurs, Jan 28, 2:15 to 3:30 pm

MTCC 201D

Thank You!
Any Questions?