



Canadian Association
Library canadienne
Association des bibliothèques

Canadian Library Association Model Policy on Copyright for Libraries

CLA recommends that this policy, modified to suit local circumstances, be reviewed with your library's legal counsel. It is intended to assist public and not-for-profit special libraries and does not consider some issues which are relevant to libraries in an educational institution.

Introduction

The _____ Library respects both user rights relating to use of copyrighted materials and the moral rights of creators and the economic and distribution rights of creators and content providers. Much of the material in the library's collection is subject to copyright and there may be restrictions on the reproduction of those materials. Further, some library materials, for example eBooks, online databases or other electronic resources, may be subject to the provisions of specific licences or other contractual obligations that limit or permit the ability to reproduce their content. As well, sections 41 and 41.1 of the *Copyright Act* specifically prohibit the circumvention of a technological protection measure applied to digital copyrighted materials with certain exceptions. However, in the absence of such limitations or prohibitions, materials in the library's collection may be reproduced:

1. By library staff and users in accordance with the fair dealing provisions under sections 29, 29.1 and 29.2 of the *Copyright Act* for the purpose of: research, private study, education, parody or satire; criticism, review; or news reporting.
2. By library staff and users where the material is in the public domain, such as when the term of the copyright protection under the *Copyright Act* has expired (usually the life of the author plus 50 years).
3. By library staff and users where only an "insubstantial" part of the material is reproduced, as under section 3(1) of the *Copyright Act*, "copyright" means the sole right to reproduce any *substantial* part of a work. In determining whether the portion of the material being reproduced is "substantial" or "insubstantial," both the quantity, i.e. the amount copied, and the value, i.e. the importance of that portion to the entire work, should be considered.
4. By library staff to perform the following maintenance or management activities in accordance with section 30.1 of the *Copyright Act*: (1) copying rare or unpublished originals, (2) copying fragile originals, (3) copying into an alternative format, (4) copying for record keeping and cataloguing, (5) copying for insurance and police investigations and (6) copying for restoration. Making a copy for activities (1), (2) and (3) is not permitted if the work is "commercially available."
5. By a person with a perceptual disability or by library staff at that person's request, in accordance with section 32(1)(a) of the *Copyright Act*, where the materials are literary, musical, artistic or dramatic works, other than a cinematographic work, and where the copy or sound recording of these works are in a format specially designed for persons with a perceptual disability. This only applies where the work is not "commercially available" in a format designed to meet the needs of a person with a perceptual disability and does not authorize the making of a large print book.

Section 41.16 of the *Copyright Act* provides that the prohibition against the circumvention of a technological prevention measure in section 41.1(1)(a) of the *Copyright Act* does not apply to persons with a perceptual disability or another person acting at their request if that circumvention is for the sole purpose of making a work or a sound recording perceptible to a person with a perceptual disability and provided the circumvention does not unduly impair the technological prevention measure.

6. By library staff and users to the extent that is permitted under licenses provided by vendors of the materials (usually publishers) or under a license that the library has negotiated with a collective society or a relevant tariff that has been determined by the Copyright Board of Canada. Such licenses, when they apply, will ideally allow more extensive copying than can be carried out under fair dealing or other Copyright Act exceptions.
7. By library staff and users where the material, although under copyright, can be copied because the creator or other copyright holder has given a general permission to do so, most often for non-commercial purposes and an expectation of the original work being attributed to its creator. Such materials are those that appear in “open access” publications or online repositories, those that are under a “Creative Commons” license, or those governed by a special policy of their publisher, such as the Government of Canada’s general permission to copy federal government documents for non-commercial purposes.

Library staff members making copies for users are required to follow the library’s Reproduction Policy as outlined below. Notices shall be posted on self-service photocopiers made available for library users as outlined below. Responsibility for copyright arising in connection with the use of any copy made of materials in the library’s collection is the responsibility of the user requesting or making the copy.

Fair Dealing

Under the fair dealing provisions of sections 29, 29.1 and 29.2 of the *Copyright Act*, copying for the purposes of research, private study, education, parody, satire, criticism, review or news reporting does not infringe copyright. These provisions are technologically neutral. The Supreme Court of Canada in the case of *CCH Canadian Ltd. v. Law Society of Upper Canada*, 2004 SCC 13 has given “research” a large and liberal interpretation to ensure that users’ rights are not unduly constrained. “Research” includes commercial, non-commercial and private research. The Supreme Court found that fair dealing is a matter of “impression.” The application of fair dealing is therefore not clearly defined.

The following six factors were cited by the Court to help in determining whether a particular dealing is “fair”:

1. The purpose of the dealing - The purpose of the dealing will be fair if the copying is for one of the allowable purposes, namely research, private study, criticism review or news reporting. These allowable purposes should not be given a restrictive interpretation. What is required is an objective assessment of the real purpose in copying the work.

2. The character of the dealing - If multiple copies are being widely distributed, this will tend to be unfair. If a single copy is used for a specified legitimate purpose, then it is easier to conclude that it is a fair dealing. It may be relevant to consider the custom or practice in a particular trade or industry to determine whether or not the character of the dealing is fair.
3. The amount of the dealing - If the amount copied from the work is trivial, it is more likely to be considered fair. However, it may be possible to deal fairly with a whole of certain types of works. For example, there may be no other way to criticize or review a photograph or research a journal article unless the whole work is copied.
4. The nature of the work - It is more likely to be “fair” to copy a published work as opposed to an unpublished or confidential work.
5. Available alternatives to the dealing - If there is a non-copyright equivalent to the work that could have been used instead of the copyright work, this may weigh against a finding of fairness.
6. The effect of the dealing on the work - If the copied work is likely to compete with the market for the original work, this may suggest that the dealing is not fair.

Reproduction Policy

The materials in the _____ Library’s collection are open to our users _____ (users or user types can be named). Single copies of library materials that are in the public domain or are required for the purposes of research, private study, education, parody, satire, criticism, review or news reporting may be provided to our users either from our own collection or, as required, via interlibrary loan from the collections of other libraries.

Reproducing portions of materials in the Library’s collection on behalf of our users in accordance with this policy supports their access to published materials while respecting the rights of copyright holders in such materials, in keeping with the fair dealing provisions in section 29, 29.1 and 29.2 of the *Copyright Act*.

Guidelines to Access

1. The library will provide single copies for specific purposes, identified in advance to library staff.
2. The specific purposes are research, private study, education, parody, satire, criticism, review or news reporting. Any doubt concerning the legitimacy of the request for these purposes will be referred to the _____ (insert title of the appropriate library staff member).
3. The individual must identify him/herself and the purpose at the time of making the request. A request form will be completed by library staff, based on information provided by the requesting party.

4. Discretion must be used as to the amount of copying. No copies will be made for any purpose other than that specifically set out on the request form. Ordinarily, requests for a copy of one article or one book chapter will be satisfied as a matter of routine. Requests for substantial copying from library materials will be referred to the _____ (insert title of the appropriate library staff member) for consideration in accordance with the six fair dealing factors outlined above and may ultimately be refused.
5. This service is provided on a not-for-profit basis. The fee charged for this service is intended to cover the costs of the library. (libraries that do not charge users for copying should delete this provision)

Information Note: Libraries that reproduce portions of their materials in accordance with these Guidelines to Access may wish to consider whether they require a reprographic license for this purpose.

Self-Service Photocopier Notice Signs

The Supreme Court of Canada held in the *CCH Canadian Ltd. v. Law Society of Upper Canada* case that the provision of self-service photocopiers with posted copyright notice signs and which were not directly monitored by the library in the case did not constitute an authorization to infringe copyright. In doing this, the Court found that one does not authorize infringement by authorizing the use of equipment, which might be used to infringe copyright and further that courts should presume someone who authorizes an activity “does so only so far as it is in accordance with the law.” This presumption may be rebutted where a “certain relationship or degree of control existed between the alleged authorizer and the persons who committed the copyright infringement.”

The notice posted by the library in that case with its self-service photocopiers was as follows:

“The copyright law of Canada governs the making of photocopies or other reproductions of copyright material. Certain copying may be an infringement of the copyright law. This library is not responsible for infringing copies made by the users of these machines.”

Information Note: Section 30.3 of the *Copyright Act*, provides that it is not an infringement of copyright where a copy is made of library materials on a machine installed by the library for its users as long as the library has an agreement with a collective society and a notice warning of copyright infringement is posted as set out in section 8 of the *Exceptions for Educational Institutions, Libraries, Archives and Museums Regulations* (SOR/99-325) to the *Copyright Act*. Libraries that post self-service photocopier notices in circumstance similar to the *CCH Canadian Ltd. v. Law Society of Upper Canada* case may wish to consider whether they require a reprographic license for this purpose.