

## COPYRIGHT

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**Effective Date:** December 1, 2012

**Responsibility:** Vice President Academic Admin

**Amends Policy dated:** January 1, 2010

**Policy Number:** OAP 15

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**Scope:** Copyright policy applies to all use of all copyrighted material in the activities of the University by its members. The purpose of the policy is to provide information on fair, ethical and legal use of copyrighted materials in compliance with Canadian and international copyright law. It is not intended as legal advice. Each member of the University community is expected to comply with the policy. Failure to observe legal protection of copyrighted material is a violation of the law.

### Copyright Law

The law of copyright balances the legal rights of ownership and the reputation of the originator of artistic, intellectual and dramatic works to reproduce, perform, broadcast or publish a work or any substantial part of the work with the needs of the public to use the material. Copyright is granted to the originator automatically upon creation of the work whether in print or digital format and includes, but is not limited to books, periodicals, maps, images, letters, photographs, works of art, film, video, websites, etc. Works in fixed form are copyrighted. Ideas are not subject to copyright. In Canada, copyright remains in force for the life of the author plus fifty years.

### Fair Dealing

Copying an insubstantial part of the work, known as fair dealing, is permitted. Fair dealing within copyright law protects the right of the public to use copyrighted material for private study, research, review, criticism, education, parody and news reports. No permission of the copyright owner or payment of royalties is required. In all fair dealing the user is required to give the source and the name of the creator. In determining whether fair dealing or copyright infringement have taken place, courts use the following six-point test.

1. The Purpose of the Dealing
2. The Character of the Dealing
3. The Amount of the Dealing
4. Alternative to the use
5. Nature of the work
6. Effect of the dealing on the work

In all fair dealing the user is required to give the source and the name of the creator. The Supreme Court ruling, [Province of Alberta as represented by the Minister of Education, et al. v. Canadian Copyright Licensing Agency Operating as "Access Copyright"](#) encourages a “large and liberal interpretation” of fair dealing. Burman University claims the full use of fair dealing in the context of Canadian law.

### **Copyright Collective Licenses**

Burman University has signed licenses with the following copyright collectives to cover limited use of copyrighted material beyond what is permitted under fair dealing.

[Audio Cine](#): The university college may show videos and DVDs of feature-length films to members of the college community, namely students. Such screenings may not be advertised to the general public or used for fundraising purposes. Reports on screened films must be made every three months. Participating studios are listed at <http://www.acf-film.com/en/index.php>.

[Criterion Pictures](#): The university college may show videos and DVDs of feature-length films on campus for entertainment and educational purposes. Outdoor screenings are not permitted. The agreement does not cover taped copies. A report listing each screening and the source from which it was acquired must be submitted within ten days of the end of each month. Participating studios are listed at [http://www.criterionpic.com/CPL/lcl\\_studiosproducers\\_new.html](http://www.criterionpic.com/CPL/lcl_studiosproducers_new.html).

### **Copyright Officer**

The Library Director is the designated Copyright Officer. All questions regarding copyright and obtaining permission to use material not covered by fair dealing, or licenses with copyright collectives should be directed to the Copyright Officer.

Sheila Clark  
Library Director  
Burman University  
Telephone: (403) 782-3381 ext. 4102  
Email: [sclark@cauc.ca](mailto:sclark@cauc.ca)

### **Permissions Checklist Procedure**

#### **Print Works**

No permission is needed if the copying is:

1. Fair dealing: This includes copying short excerpts of works to distribute in class.

2. Of a work in the public domain, i.e., it is past the fiftieth calendar year of the author's death. This does not apply to new editions, translations, or adaptations of the original work.

Obtain permission to copy when:

1. The work is unpublished. This includes getting permission from students to display their work to another class.
2. The copying is more extensive than permitted under fair dealing.

Do not copy:

1. Sheet music.
2. Consumable workbooks

### **Cinematographic Works**

No permission is needed if:

1. A legal copy of the cinematographic work is shown on the premises of Burman University for educational purposes.
2. The cinematographic work is listed in the participating studios of [Audio Cine](#) and [Criterion](#). Our license agreements require all such showings for non-educational purposes on campus whether in the classroom or for other groups or clubs to be reported.

Obtain permission when:

1. Admission is being charged.
2. The cinematographic work is being shown outdoors and it is from a studio participating in the Criterion collective.

### **Artwork**

Obtain permission from the copyright owner.

### **Internet works**

No permission is needed if:

The material is freely and legally available on the web.

Obtain permission if:

1. You are posting material located behind a paywall.
2. You are posting scanned materials from a print source which exceeds the use allowed by fair dealing. This includes student work which you wish to display to other students. An example would be posting a sample student paper from a previous course.
3. There is a clear statement on the site prohibiting such use.

### **Dramatic Performances**

No permission is needed if:

The play is performed on campus for pedagogical purposes. Admission sufficient to cover the overhead expenses may be charged.

Obtain permission if:

The play is being performed as a fundraiser. Permission can be requested at [www.MTIShows.com/PerfLicense](http://www.MTIShows.com/PerfLicense).

### **Frequently Asked Questions**

**Q. Can I show any library-owned DVD or video in class?**

A. Yes.

**Q. I want to compile a course pack for my course. What do I need to do?**

A. Articles contained within the library databases may be linked within courseware. Submit a bibliography of other resources to the Copyright Officer two months before the course begins to allow time for permission to be requested.

**Q. Can I link to journal articles I find within our own library databases in the courseware I use?**

A. Yes. Links to journal articles found within library databases may be made within courseware or emailed directly to students.

**Q. Since educational use is fair dealing can I copy or post as much material as I need for my students?**

A. No. The courts use the six-point test whether a use is fair. Purpose of the use is only one of the criteria in determining whether a use is fair.

1. **The Purpose of the Dealing:** “In Canada, the purpose of the dealing will be fair if it is for one of the allowable purposes under the [Copyright Act](#), namely research, private study, criticism, review, education, parody or news reporting.”
2. **The Character of the Dealing:** “If multiple copies of works are being widely distributed, this will tend to be unfair. If, however, a single copy of a work is used for a specific legitimate purpose, then it may be easier to conclude that it was a fair dealing. If the copy of the work is destroyed after it is used for its specific intended purpose, this may also favour a finding of fairness. 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:** Using a brief quote is fair dealing. In some cases copying the entire work, for example a photograph, may be considered fair dealing. “The amount taken may also be more or less fair depending on the purpose. For example, for the purpose of research or private study, it may be essential to copy an entire academic article or an entire judicial decision. However, if a work of literature is copied for the purpose of criticism, it will not likely be fair to include a full copy of the work in the critique.”
4. **Alternative to the use:** If a non-copyrighted equivalent is available use of the copyrighted material will likely be considered unfair. The dealing should be necessary to the purpose. “For example, if a criticism would be equally effective if it did not actually reproduce the copyrighted work it was criticizing; this may weigh against a finding of fairness.”
5. **Nature of the work:** “If a work has not been published, the dealing may be more fair in that its reproduction with acknowledgement could lead to a wider public dissemination of the work – one of the goals of copyright law. If, however, the work in question was confidential, this may tip the scales towards finding that the dealing was unfair.”
6. **Effect of the dealing on the work:** “the reproduced work is likely to compete with the market of the original work, this may suggest that the dealing is not fair. Although the effect of the dealing on the market of the copyright owner is an important factor, it is neither the only factor nor the most important factor. . . .”

Quoted from the [Judgments of the Supreme Court of Canada \(CCH Canadian Ltd. v. Law Society of Upper Canada, 2004 SCC 13, \[2004\] 1 S.C.R. 339\)](#).

In all fair dealing the user is required to give the source and the author of the work.

**Q. Can I show a rented video or DVD?**

A. Yes. Any legal copy of a cinematographic work may be shown in the classroom.

**Q. Can my acting class put on a play without permission?**

A. Yes. No permission is needed if the play is performed on campus for pedagogical purposes. Admission sufficient to cover the cost including overhead expenses may be charged. Permission must be obtained if the performance is a fundraiser.

**Q. What is public domain?**

A. Public domain means that the copyright has expired. In Canada, copyright extends for fifty years after the author's death. Exceptions do occur. See the [Canadian Public Domain Flowchart](#) to determine if a work is in the public domain. Works in the public domain can be freely copied.

**Q. Does public domain mean I can copy any work of an author whose material is in the public domain?**

A. Not necessarily. Later editions of the work may be copyrighted. For example, you may freely copy a Shakespeare play from the [Gutenberg Project](#), but not from a recent edition of the same play.

**Q. It's free on the web. Is it copyrighted?**

A. Yes. Copyright exists upon creation whether in print or digital format. However, current Canadian law permits the use of material freely and legally available on the web. Works must be posted by the copyright owner and not be located behind a pay wall or have posted a clear notice prohibiting such use.

**Q. May I make copies of sheet music for each member of our music performance group so the purchased copies are kept in good condition?**

A. No. Unless the work is rare, fragile and there is no commercial alternative, sheet music must not be copied.

**Q. The material I'm using was created in a country other than Canada. How do I determine which copyright law to apply?**

A. Canadian copyright law applies. Canada is a signatory to the [Berne Convention](#) as are most countries. The copyright law of the country in which the copying is done applies. For example, material used in Canada must be in accordance with Canadian copyright law though the material was produced in the U.S. or some other [signatory](#) to the Berne Convention.

## **Resources**

[Canadian Association of University Teachers: Intellectual Property Advisory](#)

[Canadian Copyright Act](#)

[Canadian Intellectual Property Office](#)

[Canadian Heritage: Fair dealing in Canada](#)

[Canadian Public Domain Flowchart](#)

[Creative Commons](#)

[Excess Copyright](#)

[Judgments of the Supreme Court of Canada \(CCH Canadian Ltd. v. Law Society of Upper Canada, 2004 SCC 13, \[2004\] 1 S.C.R. 339\).](#)

[Michael Geist's Blog](#)

<http://samtrosow.wordpress.com/>

[University of Waterloo Copyright FAQ](#)