

INFORMATION AND ANSWERS ACQUIRED FROM COPYRIGHT MATTERS Based on the Copyright Modernization Act

Can a teacher copy for instruction?

- **Yes.** A teacher can copy (or take any other necessary action) in order to display a work protected by copyright. This permits the use of whiteboards and similar tools, overhead projection using a device such as an LCD screen, overhead, opaque, or slide projector, provided the work is used for the purpose of education and training and is not already commercially available in a medium that is appropriate for this purpose.

Can a teacher copy for tests and examinations?

- **Yes.** Teachers in Canada may copy, translate, communicate electronically, show, or play any copyright-protected work for a test or examination, provided the work is not already commercially available in an appropriate medium for the purpose of a test or examination.

How does copyright affect school libraries?

School libraries can:

- make a copy for the purpose of cataloging, internal record keeping, for insurance purposes, or police investigation;
- make a copy for the purpose of restoration;
- use digital technology to deliver an interlibrary loan copy of a copyright-protected work.

Provided a replacement copy is not commercially available in a medium and of a quality that is appropriate for these purposes, school libraries **can also:**

- make a copy of a work “if the original is rare or unpublished and is deteriorating, damaged, or lost”;
- make a copy of a fragile document or recording for on-site consultation if the original cannot be viewed, handled, or listened to because of its condition;
- make a copy if the original is in an obsolete format, or is in danger of becoming obsolete, or the technology to use the original is unavailable or is in danger of becoming obsolete.

Can teachers play a sound recording or turn on a radio for students to listen to, or turn on a television for students to watch?

Yes, you can play sound recordings and turn on televisions and radios in the classroom,

subject to all of the following conditions:

- it must take place on the premises of an educational institution;
- it must be for educational or training purposes;
- it must not be for profit;
- it must take place before an audience consisting primarily of students of the educational institution, persons acting under its authority, or any person who is directly responsible for setting a curriculum for the educational institution; and
- it must not involve a “motive of gain.”

This user's right does not apply to recorded radio and television programs, but only to playing radio and television programs while they are being transmitted (over-the-air broadcast, cable, satellite, or over the Internet).

Where music is performed for a non-educational objective, SOCAN tariffs apply. Examples that require royalty payments include music performed for extracurricular activities without an educational component or clear educational purpose such as a non-educational assembly, background music, a sports event, a school dance, or a fashion show. The Division pays SOCAN fees on behalf of all schools therefore schools do not need to pay individual SOCAN fees.

Can students perform a work protected by copyright, such as a play, on school premises?

- **Yes.** An example is the performance of a play in a drama class. The same five conditions as those cited for playing sound recordings, listening to the radio, or watching television listed in the answer to the previous question must be met before this user's right applies.

Can music be performed without the copyright owner's permission?

The Copyright Act permits educational institutions to perform music, whether recorded or live, without payment or permission from the owner of the copyright. A person acting under the authority of a non-profit educational institution can:

- perform a musical work live if the performance is primarily by students of the educational institution;
- play sound recordings containing a musical work; and
- play radio and television programs containing a musical work while the program is being transmitted (over-the-air broadcast, cable, satellite, or over the Internet).

The following conditions apply. The performance must:

- take place on the premises of an educational institution;
- be for educational or training purposes;
- not be for profit; and
- take place before an audience consisting primarily of students of the educational institution, persons acting under its authority, or any person who is directly responsible

for setting a curriculum for the educational institution.

The *Copyright Act* permits the public performance of music in schools when it is “in furtherance of an educational objective.” Performances that are not in furtherance of an educational object do not qualify and therefore SOCAN licenses cover this event.

The following uses of live and recorded music are permitted by the *Copyright Act* and therefore do not require permission and payment:

- in school assemblies (e.g., a recording of O’ Canada);
- by a student in a presentation to other students, teachers, assessors, or parents (e.g., as part of a presentation during music class);
- in demonstration activities by students, primarily for other students, teachers, assessors, or parents, and for which any admission fee charged covers costs but does not make a profit (e.g., a concert by the school choir, gymnastic routines, shows by school bands);
- during school hours for teaching/learning (e.g., music/dance/ dramatic arts classes); and
- before and after school, and during recess, if the use is for educational purposes (e.g., school radio operated by students for credit and supervised by a teacher).

The following uses of live and recorded copyrighted music are not permitted by the *Copyright Act* and therefore require permission and payment:

- at school dances;
- at school sporting events;
- while people are on hold when they telephone the school;
- at an event where the admission fee is intended to make a profit; and
- on school premises for no other reason than as background music

Keep in mind that some music is copyright free, royalty free and is available online for use at any event. SOCAN licenses are paid by the Division for the above purposes when copyrighted music is used for non-educational purposes.

The following uses of live and recorded music are not permitted by the *Copyright Act*, and SOCAN cannot provide licenses to schools and school boards for music used in these examples:

- in a play performed live (e.g., a drama class’s production of *My Fair Lady*). In this case, the educational institution must obtain copyright authorization from a theatrical agent;
- in performances on school premises by outside performers (e.g., invited singers, magicians, etc.). In this case, obtaining copyright authorization is the responsibility of the outside performers;
- in activities held in school facilities that are rented or are provided free of charge to outside groups. In this case, obtaining copyright authorization is the responsibility of the outside group.

The factors to consider when determining whether music use requires permission

include:

- Did the music use occur during school hours?
- Will the student be graded on the activity involving the music use?
- Does the music use involve a demonstration by a student or teacher for other students, teachers, assessors, or parents?
- Is it reasonable to consider the music use to be for educational purposes? The phrase “educational purposes” is not defined in the *Copyright Act* but can be described as an activity that is planned and where the objective is for students to meet one or more subject or program outcomes.
- Was the music used on school premises?
- If admission was controlled, was it free?
- Was the music use for a non-profit purpose?

Can students and teachers use copyright-protected works to create new works? This is commonly known as “mash-ups”.

The *Copyright Act* contains a user's right permitting anyone, not just students and teachers, to use copyright-protected works to create new works. This user's right is referred to in the *Copyright Act* as “non-commercial user-generated content.” This user's right can be found in section 29.21 of the *Copyright Act* as amended by the *Copyright Modernization Act*. The following conditions apply to the creation of non-commercial user-generated content:

- It can only be used for non-commercial purposes.
- The original source must be mentioned, if it is reasonable to do so.
- The original work used to generate the content must have been acquired legally.
- The resulting user-generated content does not have a “substantial adverse effect” on the market for the original work.

This user's right permits students to use copyright-protected works to create videos, DVDs, or mash-ups, as long as the conditions above are all met.

The user's right permits user-generated content created under provision of the *Copyright Act* to be disseminated. Dissemination includes uses such as posting a video to YouTube or a Web site.

Can teachers show an audiovisual work (such as a DVD or video) on school premises without infringing copyright?

The *Copyright Act* permits showing an audiovisual work such as a DVD or video as long as the work is not an infringing copy or the person responsible for the showing has no reasonable grounds to believe it is an infringing copy. Teachers can show audiovisual works purchased or rented from a retail store, a copy borrowed from the library, a copy borrowed from a friend, and YouTube video.

Showing movies from subscription services (ie. Netflix) in the classroom is governed by the terms of the agreement between the subscriber and the subscription service. If the agreement

provides that use is limited to “personal” or “household” use, for example, then classroom use is not permitted under the agreement. NetFlix currently does not allow public performance and therefore using their videos in the classroom would be a violation.

Can teachers copy an audiovisual work at home and show it in the classroom?

- **No.** Teachers cannot copy an audiovisual work at home and then show it in the classroom. Teachers can, however, show a legally obtained copy in the classroom. A legally obtained copy includes a copy purchased or rented from a retail store (including iTunes), a copy borrowed from the library, a copy borrowed from a friend, and a YouTube video.

Can lessons be streamed live to students or recorded and made available on-line for students at a time of their choosing?

- **Yes.** Educational institutions can transmit lessons to students in real time over the Internet or make a recording of a lesson available on-line. For example, a student in one school is able to access an on-line course containing copyright-protected material offered in a different school.

Can teachers and students copy from the Internet?

- **Yes.** Educational institutions, teachers, and students may save, download, and share publicly available Internet materials, as well as use that material in the classroom and communicate it to students or others within their education circle.
- “Publicly available” materials are those posted on-line by content creators and copyright owners without any technological protection measures, such as a password, encryption system, or similar technology intended to limit access or distribution, and without a clearly visible notice prohibiting educational use.
- Routine classroom uses may be made of publicly available Internet materials, such as incorporating on-line text or images into homework assignments, performing music or plays on-line for peers, exchanging materials with teachers or peers, or reposting a work on a restricted-access course web site.
- To encourage copyright awareness and respect in all circumstances, students and educators are required to cite the source of the Internet materials they use.

Can teachers and students break digital locks to use copyright-protected materials they have the legal right to use?

- **No.** A digital lock is a technological protection measure (such as encryption or a password) that restricts the ability of users of digital content from sharing or copying the content. The *Copyright Act* prohibits breaking a digital lock even for educational uses that are otherwise permitted by the *Copyright Act*. For example, the encryption on most commercial DVDs, or the serial-key validation required by many software programs, protects these DVDs and software programs from unauthorized use. These protections cannot be broken even if the purpose of the use is otherwise allowed.

Where can I get more information on copyright?

<https://www.alberta.ca/copyright-awareness-for-teachers>

Where can I get more information on Creative Commons licensing?

<https://ca.creativecommons.net/>

Reference: [Education Act](#) Section 33, 52, 53, 196, 197, 222

[Copyright Act](#)

[Copyright Modernization Act](#)

[Fair Dealing Guidelines](#)

[Copyright Decision Tool](#)

[Copyright Matters!](#)

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