

# ***Copyright Act, Sections 29.4 – 30.03: Educational Institution Exceptions***

## **Opening Up Copyright Instructional Module**

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### **Learning Objectives**

1. Understand the educational exceptions in ss. 29.4 to 30.03 of the *Copyright Act*
2. Describe the ‘publicly available materials on the internet’ exception
3. Recognize that the use of copyright-protected materials for educational purposes may also fall under a fair dealing exception and that educators need not rely on ss. 29.4 to 30.03 alone

### **Transcript**

Hello and welcome to the University of Alberta’s Opening Up Copyright instructional module on Educational Institution Exceptions in the *Copyright Act*.

#### **Educational Exceptions to Infringement**

The *Copyright Act* outlines certain circumstances where users can copy or use copyright-protected works without infringing on the rights of the copyright owners. Sections 29.4 to 30.03 of the *Act* describe the exceptions to infringement that apply specifically to educational institutions and staff. That said, it is critical for people who work in education to understand that in addition to these exceptions, they can also rely on the fair dealing exception, discussed further in other modules. In most cases, it is better to look at fair dealing exceptions first, as they provide more flexibility than the exceptions we will be discussing here.

The exceptions that apply specifically to educational institutions or people acting under their authority can be a little bewildering to be honest. Let’s go through them in order.

#### **Classroom Displays**

Starting with displaying works in classrooms.

It is not infringing copyright to copy a work, or take another necessary action, in order to display it in a classroom but this has to be done for educational purposes and it can only be displayed on school premises. Sounds great right? Except there is a limitation, which is that the work cannot be reasonably ‘commercially available.’ So, it is okay for you to make a copy of something in order to display it in your classroom, as long as it is not reasonably possible for you to *buy* a copy in the right format for you to display in your classroom. Although, arguably this hinges on what you consider ‘reasonable.’

You can also reproduce things in order to include them in exams but again only if that thing is not commercially available in the appropriate medium.

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### Public Performances

Section 29.5 covers certain public performances of things like plays or music in educational institutions. This is allowed as long as the audience is composed primarily of students and educators, the performance is done primarily by students, and it is held on the premises of the institution.

### Sounds, Films, and Broadcasts

Similarly, educational institutions can play sounds, films, or broadcasts made by others as long as the audience is primarily composed of students and educators and the copy was acquired in a way that is not infringing copyright. This exception makes it possible for teachers to include a variety of different kinds of works and media into their lessons.

Teachers can also make a single copy of a broadcast for use in a classroom. If the recording is of a news program it can be kept for subsequent classroom use, but if the copy is of a documentary or of a non-news broadcast, the copy must either be destroyed or royalties must be paid after thirty days. So if you are a teacher or instructor and you see a documentary that might be useful in a few months or next semester... I guess you don't bother recording it, or just consider whether you may be able to rely on fair dealing.

### Telecommunication and Recording

If you thought that was useful, just consider some of the s. 30 exceptions. It is not infringing copyright to use materials in a telecommunication in order to deliver a lesson, test or examination to students who are enrolled in a course, even if they are not physically on the school premises (s. 30.01).

You can also make a fixation (such as a screen recording) of that telecommunication or do any other action that is necessary. A student can also make a reproduction of it in order to listen to or view the lesson at a more convenient time. Both the students and the educators are required to destroy a reproduction within 30 days after students receive their final course evaluations for the class that the lesson was a part of. This is a controversial condition because educators would usually want to encourage students to revisit their training and lessons in the future. Not only that, but institutions and teachers don't usually have the time or money to go to the trouble of preparing a lesson only to destroy it at the end of the term (Murray & Trosow, p. 192). It is also unclear how these rules would be enforced. For distance education or online learning it is perhaps better to reference the educational institution's fair dealing guidelines and rely on those exceptions instead. Having students and teachers destroy their lessons after courses are over kind of undermines the whole goal of education.

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### Reprographic Reproduction

As s. 30.02 attempts to explain – we think, as there is no case law on this point – it is also not an infringement of copyright to make a digital reproduction of a reprographic reproduction in order to include it in a telecommunication of a lesson as long as you have a reprographic reproduction licence with a collective licensing agency.

Did we lose you? Honestly, I think I lost myself, so no worries... Essentially, if you have entered into a specific digital reproduction licence agreement with a collective you must follow those terms and conditions when making a digital reproduction or copy, otherwise you can comply with the licence terms and conditions applicable in your reprographic reproduction licence to the extent that they are reasonably applicable to a digital reproduction.

If an institution has been paying royalties to a collective voluntarily under an interim tariff and then that institution enters into a digital reproduction licence agreement with that collective, or if a tariff that applies to the digital copies being made is approved at a new royalty rate, there may be a difference in the amount of royalties that the institution owes the collective for digital copies going forward.

When we said these exceptions are bewildering ... we were not kidding. Have we mentioned fair dealing exceptions? Those exceptions are looking pretty good right about now.

### Publically Available Materials

Now let's talk about PAM. Not professor Pam, who you might recognize from other modules, but the Publicly Available Materials on the Internet provision in the *Copyright Act*! As s. 30.04 states, if something is available through common uses of the internet it is not infringement for that thing to be reproduced, communicated through telecommunication, or performed for educational or training purposes. This is not the case if it is protected by a Technological Protection Measure or TPM, or if the owner explicitly posts otherwise. It is important to remember that reproducing for educational purposes does not mean distributing on the open web. A common interpretation of the conditions of this section is to make these resources available in a restricted environment, like an online portal that requires student and staff authentication to access.

### Copyright Act Review

These educational exceptions did not specifically come up at all during the INDU committee's statutory review of the *Copyright Act* in 2019. This might speak to the fact that these exceptions are not relied on very often and are thus not as relevant as the fair dealing exception. However,

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we like to think that the second recommendation calling for the wording of the *Act* to be simplified may be especially useful for these sections.

### Learning Objectives

You should now be able to:

- Understand the educational exceptions in ss. 29.4 to 30.03 of the *Copyright Act* (that is, if anyone can understand these exceptions)
- Describe the ‘publicly available materials on the internet’ exception (whatever that is)

Recognize that the use of copyright-protected materials for educational purposes may also fall under a fair dealing exception and that educators need not always rely on ss. 29.4 to 30.03 alone

Basically, don’t even watch this module again. Just rely on fair dealing or try to find OER...

### Thank You for Your Attention

This has been the University of Alberta’s Opening Up Copyright instructional module on the Educational Institution Exceptions in the *Copyright Act*. Thank you for your attention.

### Questions

1. According to section 29.4, it is not an infringement of copyright for a teacher to make a copy of a work in order to display it in their classroom as long as:
  - a. The work is not reasonably commercially available in the appropriate format
  - b. The copy is only displayed on the school premises
  - c. The copying is done for educational purposes
  - d. **All of these are true**
2. According to section 31, you can telecommunicate a screen-recording of a lesson in order to watch it later but, 30 days after students have received their final grade:
  - a. The student must destroy the copy
  - b. The educator must destroy the copy
  - c. **The student and the educator must destroy the copy**
  - d. The student must forget what they were taught

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3. What is the name of the provision where, if something is available through common uses of the internet, then it is not infringement for that thing to be reproduced, communicated through telecommunication, or performed for educational or training purposes?
  - a. **Publicly Available Materials provision (PAM)**
  - b. Supposedly Publicly Available Materials provision (SPAM)
  - c. Hardly Available Materials provision (HAM)
  - d. Copyright Act Madness provision (CAM)
4. A common interpretation of the conditions of the Publicly Available Materials provision is to make these resources available in a restricted environment, such as an online portal.
  - a. **True**
  - b. False
5. When trying to determine if you can copy or use copyright-protected materials for educational purposes it is best to start with:
  - a. **Section 29 of the Copyright Act, the fair dealing exception**
  - b. Sections 29.4-30.03, the education exceptions
  - c. Section 44.12, court-ordered detention
6. Many institutions have adopted fair dealing guidelines that are more relevant and understandable than the education-specific exceptions in the *Copyright Act*.
  - a. **True**
  - b. False