



Ontario Health Libraries Association

**A GUIDE TO COPYRIGHT
FOR CANADIAN HOSPITALS
2013:
AN INSTRUCTIONAL RESOURCE**

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Q PURPOSE AND USE OF THIS GUIDE

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This guide is an instructional resource for creating educational presentations. It is intended to assist hospitals, and the staff and physicians who work in hospitals, to understand Canadian copyright law and is for general information purposes only. It reflects interpretations and practices regarded as valid, based on available information as of June 2013. It does not intend to provide legal advice or opinion.

This document may be freely reproduced and distributed without obtaining the permission of OHLA. In order to preserve the meaning of sometimes complicated legal language, no changes should be made to the text. Content may be used “as-is” or adapted – your slide template, logo, etc. – to meet your instructional needs. Whether used in its entirety or adapted to meet your needs, OHLA must be cited as the source. An appropriate citation for this guide is: Ontario Health Libraries Association (OHLA). A Guide to Copyright for Canadian Hospitals, 2013: An Instructional Resource. OHLA, 2013.

Q WHAT IS COPYRIGHT?

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Copyright means “the right to copy.” In general, only the copyright owner, often the creator of the work, is allowed to produce or reproduce the work, or to permit anyone else to do so.¹

The rights of copyright owners and the exceptions granted to members of the public to use copyright material are governed by the Canadian Copyright Act.²

Q WHY IS COPYRIGHT IMPORTANT?

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Many copyright materials are accessed and used in hospitals on a daily basis for patient care, research and education. Penalties for being found guilty of copyright infringement can be significant. It is important, therefore, for hospitals, staff, and physicians to be aware of their rights and obligations concerning copyright and their compliance with it.

¹ Source: http://www.cipo.ic.gc.ca/eic/site/cipointernet-internetopic.nsf/eng/h_wr00003.html

² This and all subsequent references to the Canadian Copyright Act refer to Act C-42, which can be found at: <http://laws-lois.justice.gc.ca/eng/acts/C-42/index.html>

Q WHAT IS COPYRIGHTABLE?

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A Ideas and facts are not protected by copyright. Only works that are original and fixed are protected by copyright. A work is “fixed” when it is produced onto any media, like paper or within a digital file. Ideas and facts are not copyrightable, but the form in which they have been fixed and the form of their communication usually are protected by copyright.

The Copyright Act covers all original, literary, artistic, and musical works in the literary, scientific or artistic domain whatever the mode of expression. Originality is the key element in determining whether a work is protected by copyright. Original works that are covered include:

- Literary works such as novels, academic textbooks, journal articles in print or electronic formats, newspapers, pamphlets and computer programs
- Dramatic works such as films, videos, dvds, plays, screenplays and scripts
- Musical works and songs
- Artistic works such as paintings, drawings, cartoons, maps, photographs, sculptures and architectural works
- Broadcast communication signals, sound recordings and performances

Q WHAT DOES COPYRIGHT PROTECT?

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A Copyright protects works from being copied, performed or distributed without the permission of the copyright owner, often but not always the author or the creator of the work, and provides exceptions for special circumstances.

Q WHO OWNS THE COPYRIGHT?

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A In practice, most authors no longer hold copyright to the original works they have created. They have either created the work in the course of employment, or in seeking publication, they have assigned copyright to a publisher. Publishers of electronic journals license access to their content to subscribers. These licenses define the rights subscribers have, such as the right to print or download or distribute articles.

Q HOW DO YOU GET COPYRIGHT PERMISSION?

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A First, you need to determine who owns the copyright. Is it the creator/author, the employer, the publisher, or someone else? Sometimes simply determining who owns the copyright can be difficult.

After you have determined who holds the copyright, you need to request from them permission to use their work. You need to specify what part of their work you want to use, how you want to use it, and how many people are going to get it.

Q HOW DO YOU COPYRIGHT YOUR WORK?

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A Copyright is bestowed automatically when you create an original work. You do not have to do anything. You are automatically protected by law. It is also good practice to “mark” your work with the copyright symbol, e.g. © Jane Doe, 2013. Although marking is not necessary in Canada for a work to be protected, it serves notice that the work is protected and directs would-be users to the copyright owner.

As definitive proof of copyright ownership, you may choose to register your work by filing an application with the Canadian Intellectual Property Office (CIPO). The benefit of doing so is that you receive a certificate that states you are the copyright owner. In Canada, copyright for literary work lasts the lifetime of the creator plus 50 years following their death. There is a small fee charged by Canadian Intellectual Property Office to make an application.

Q WHAT IS FAIR DEALING?

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A The Copyright Act permits individuals to deal “fairly” with copyrighted material as long as the “dealing” – copying, reproducing, etc. – is for the purpose of research, private study, education, parody or satire. Unfortunately the Act does not define what fair dealing is, nor does it clarify what types of use would constitute research, private study, etc. This lack of clarity over what constitutes fair dealing, and especially what is meant by “educational use” means that avoidance of risk and eventually the courts will determine practice.

The Canadian Supreme Court has held that the following factors are important in determining if usage falls within “fair dealing”:

The *purpose* - it is more likely to be considered fair if it is used for research, etc.

The *character* of the dealing - what was done to the work?

The *amount* of the dealing - quantitatively, how much of the work was copied and was it a substantial part of the work in qualitative terms?

Alternatives - were there commercial alternatives available?

The *nature* of the work - is there a strong public interest in access to the information?

The *effect* of the dealing – e.g. to what extent was the copyright owner impacted.

Q & WHAT IS A LIBRARY AND WHAT ARE EDUCATIONAL INSTITUTIONS?

A In the Fair Dealing sections of the Copyright Act, special exceptions to infringement are granted to two categories of users: Libraries Archives and Museums, and Educational Institutions. The exceptions granted to each are extensive and quite different and it is not always clear where hospital libraries – especially “teaching hospitals” fall.

Section 2 of the Copyright Act defines a library as:

“... an institution not ... for profit in which is ... maintained a collection of documents and other materials that is open to the public or to researchers

By this definition all hospital libraries, all college and university libraries and the academic health science libraries operating in them, and many other health science libraries would be considered libraries under the Act. As such they can take advantage of the exceptions to infringement granted to Libraries Archives and Museums.

Section 2 of the Copyright Act also defines an educational institution as:

“ a non-profit institution licensed to provide preschool, elementary, secondary or post-secondary education; ...a non-profit institution directed ...by a board of educationand that provides continuing, professional or vocational education or training; ... a department or agency of ... government that controls or supervises education or training; [or] ... any other non-profit institution prescribed by regulation.”

By this definition, all colleges and universities and the academic health science libraries operating in them would be considered educational institutions and could also take advantage of those sections of the Act. Although it is not explicitly clear whether or to what extent “teaching hospitals” affiliated with universities and colleges could be considered educational institutions, the implicit intent of the educational institution sections of the Act does seem clear enough: hospitals not operating within colleges and universities are not educational institutions under the Act and hospital libraries cannot utilize the exceptions to infringement granted to them.

Q & WHAT ABOUT SIGNED LICENSE AGREEMENTS WITH VENDORS?

A If your organization has a signed license agreement with a vendor or a copyright collective, the terms of that agreement will define or limit copyright permissions granted to you as a provider of library services. Licensing agreements will often define who your clients can be, where those clients must be to access services, and may also affect how you provide those services.

Common Health Library Vendors’ Terms of Use Regarding Interlibrary Loan Permissions

EBSCO

http://support.epnet.com/knowledge_base/detail.php?topic=996&id=4639&page=1

Libraries may use EBSCOhost content for Interlibrary Loan (ILL) as long as such use is not prohibited in the copyright statement accompanying the content to be used, and they abide by copyright law. EBSCO prefers for the content to be faxed rather than provided electronically.

Ovid

<http://shopjbi.com/LicenseAgreement.pdf>

1.3. “Permitted Use” means use of the Product(s) by Authorized Users at or through an Authorized Site(s) only for internal or personal research or training therein. Authorized Users may:

1.3.4. for interlibrary loan (ILL) purposes, print data obtained from searches and transmit the printed document through Purchaser’s traditional ILL policies and procedures

Proquest

http://www.proquest.com/en-US/site/terms_conditions.shtml

Interlibrary Loan of materials retrieved from the Products is allowed provided that the loan is not done in a manner or magnitude that would replace the recipient library’s own subscription to either the Products or the purchase of the underlying Work (e.g., newspaper, magazine or book), and that you comply with any special terms imposed by specific content providers or licensors as required under Section 6(c). With respect to our ProQuest® Dissertations & Theses product and other electronic archives such as Early English Books Online, Interlibrary Loan is restricted to one printed copy of the specifically requested dissertation, book or pamphlet loaned out at any one time.

Q WHAT IS OPEN ACCESS AND PUBLIC DOMAIN?

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Open access to a work online does not mean it is in the public domain. Works in the public domain are ones in which copyright has expired. Open access works are those that the copyright owner has made accessible for use, but in which they still retain ownership. For example, articles in the Canadian Medical Association Journal (CMAJ) are available full-text, but if you read the fine print under the CMAJ copyright and permissions notes, it limits the specific uses you make of the work:

“This website and all material (article, abstracts, figures, tables, image) or other content are protected by copyright. No part of the Canadian Medical Association Journal (CMAJ) may be reproduced, stored in a retrieval system or transmitted, in any form or by any means, without prior written consent. You may download or make one hard copy of a reasonable amount of material from this website for a non-commercial or educational purpose only. You may not reproduce, store in a retrieval system, modify, make available on a network, use to create

derivative works, or transmit in any form or by any means, electronic or otherwise, except with the prior permission of the Canadian Medical Association (CMA).”³

Q FREQUENTLY ASKED QUESTIONS

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The following questions on copyright are commonly received by hospital library staff. This guide provides informed answers to these questions, copyright tips, and source references to relevant sections of the Copyright Act (C-42).

Librarians can be expected to assist clients seeking information and advice about copyright . It should be stressed, however, that as librarians we are not lawyers, nor are we the copyright police.

May you make multiple print copies of an article or book chapter and hand them out?

No, it is an infringement to copy substantial parts of a work and to distribute to such an extent as to affect prejudicially the owner of the copyright.

Source: C-42, section 27.

Making multiple copies and distributing them are not exceptions allowed under the Act. To do this, you would need to obtain permission from the copyright owner. You as an individual can copy an entire article – that would be fair dealing – but you cannot then distribute copies to others. Copyright Tip: Just copy and distribute the first page containing the citation and abstract.

As the author of a journal article, may you distribute copies of your article to others?

No, this is not an exception to infringement granted under the Copyright Act. In general, it is unlikely that an author will still own the copyright to the article. Most publishers require authors to assign their copyright to the journal publisher, giving the publisher the right to distribute the work. Even as the author you would still be required to obtain permission from the publisher.

³ <http://www.cmaj.ca/site/misc/terms.xhtml>

May you download an article or book chapter from a subscription-based site and distribute it electronically?

You may not, unless your institutional site license subscription permits it. Downloading it is an exception to infringement granted under Fair Dealing, but distributing it is not. Some subscription service vendors do, however, permit this use as part of their license agreement.

May you distribute a copy of an electronic work that is freely available, i.e. “open access,” on the Internet?

Probably not. Even though it is open access, the terms of access probably do not allow you to distribute it to others. **Copyright Tip:** Just distribute the hyperlink to the work.

May the librarian send you a digital copy of an article obtained from another library through interlibrary loan?

Yes, this is an exception to infringement within the most recent version of the Copyright Act granted specifically to Libraries, Archives and Museums. It does have limits, however: you must PRINT it and CEASE using the digital copy within 5 business days from the day on which you first used it. The digital copy must not be stored, forwarded or distributed.

Source: C-42, section 30.2, subsection 5.02

May you use a copyrighted image, table or graph that you didn't create in a new work you are creating?

Yes, within specific limitations: the new work itself must be an original work, it cannot be produced for commercial purposes, the source must be cited, and the use of the image, etc. cannot adversely affect the copyright owner. Copyright tip: the appropriate use of copyright material in the creation of a new work can be complicated. It is probably best to obtain permission.

Source: C-42, section 29.21.

May you use an image, table, graph or cartoon that you didn't create in a presentation you are giving?

Yes, within specific limitations: the overall presentation itself must be an original work, it cannot be presented for commercial purposes, the source must be cited, and the use of the image, etc. cannot adversely affect the copyright owner. Copyright tip: the appropriate use of original images such as cartoons or photographs can be complicated. For educational purposes, it is not an infringement of copyright to “display” the work, e.g. by overhead projection, but this exception does not extend to “publishing” the image, etc. by making copies of it available in your handouts or the online proceedings; to do this it is probably best to obtain permission.

Source: C-42, section 29.21; see also section 29.4(1)

May you post on a bulletin board, an article or a cartoon clipped from a newspaper?

No. Posting in this manner could be considered a form of publication and is not an exception to infringement given in the Copyright Act.

May you use an image, table or graph in a new work you are creating that was available to you through clipart that you have legally obtained?

Yes. It is one of the intended purposes of clipart products that they may be used in creating original works without obtaining permission.

May the library migrate a copyright work that is part of their collections to a new format so that clients may use it?

Yes, this is an exception to infringement in the Copyright Act granted specifically to Libraries, Archives and Museums. Libraries also no longer need to wait for technology to be obsolete before converting collections. There are limitations, however, e.g. if the desired format is available commercially, you may not convert it. For example, if you have a videocassette version of a copyright work and wish to convert it to a DVD format, you may only convert it if a DVD version of the work is not available for purchase.

Source: C-42, section 30.1.

May the library make entire copies of copyrighted works for preservation purposes?

Yes, this is an exception to infringement in the Copyright Act granted specifically to Libraries, Archives and Museums. There are limitations, however, e.g. if the desired format is available commercially, you may not convert it.

Source: C-42, section 30.1.

May you deliberately circumvent a digital lock?

Generally it is an infringement of the Copyright Act to circumvent works with a digital lock. There are exceptions, however, such as alternate format copies for disabled clients, creating systems inter-operability, law enforcement, and encryption research.

Source: C-42, section 41.1.

May you publically show a DVD that you bought or rented?

No, unless you have purchased performance rights for the work, in the same way as movie theatres have purchased performance rights for the movies they play. Individuals may play DVD recordings and make copies of them for their own private use, and educational institutions may play DVD's in a classroom setting for teaching purposes, but these exceptions would not extend to a hospital playing a DVD recording at a public event.

Despite this, instructional DVD's may be sold with the understanding that instructors will use them to teach others, i.e. performance rights may accompany the work. Cinematographic works in DVD format such as movies, however, are sold or rented for personal use only and performance rights must be purchased if they are going to be shown publically.

Source: C-42, section 80. (2d).

May you play music CDS at your annual hospital holiday party?

No, unless you have purchased performance rights for the works you intend to play, in the same way as radio broadcasters purchase the right to broadcast the music they play. Individuals may play audio recordings and make copies of them for their own personal use, and educational

institutions may play music in a classroom setting for teaching purposes, but these exceptions would not extend to a hospital playing audio recordings at a public event.

Source: C-42, section 80. (2d).

May you play music being broadcast over the radio at your annual hospital holiday party?

Yes. In this case, there is not any fixing of the signal or copying of the work so it cannot be an infringement of copyright.

May you store electronic articles/books in shared drives on your workplace computer?

No, this would not be a good practice. Although it would not be an infringement to store copies of works for personal use on the hard drive of your computer, by storing them on a “shared drive” you may be enabling others to infringe copyright.

Source: C-42, section 27.(1) and (2.3)

May you provide a digital copy of a chapter of a book or periodical to your own patron?

Section 30.2(2) of the Copyright Act, outlines that a library may make a photocopy, for a person requesting to use that copy for the purpose of research or private study, of a work that is, or is contained in, an article published in a scholarly, scientific or technical periodical (other newspapers, and periodicals are included so long as they are published more than one year before the copy is made). The Copyright Act does not mention making a digital copy for this purpose. The Copyright Act does not provide a clear rule for providing a digital copy of a copyrighted material to a library’s own patron. However, it is arguable that a digital copy of a chapter of a book or journal may be given to a library’s own patron under a fair dealing exception for the purpose of research, private study, or education.

This is provided for information purposes only and is not intended to be legal advice. You should contact your legal counsel if you have any questions on this issue.



A Cite the Source

Cite the source of materials you have used. Cite the author/creator, the title and the source and date of the work. Citing a source does not excuse you from copyright infringement if you have made use of the work in a way that is not an exception to infringement granted in the Copyright Act, but many of the exceptions granted under the Fair Dealing parts of the Act require you to cite the source of the work.

Seek Permissions for Use

You should obtain permission if you want to use/reproduce materials that you did not write or create and when your use of the material is not covered by any of the fair dealing exceptions in the Copyright Act. Permissions, if granted, are usually for a limited time period and for a specified user group. They can also take time to obtain; give yourself sufficient lead time. Works in the public domain do not require permission.

Sharing digital materials

Freely available electronic documents or ones which you are licensed to use are best shared by distributing the hyperlink to the material. Do not share/post the full text.

Interlibrary Loan Disclaimer

As per the Canadian Copyright Modernization Act (S.C. 2012, c. 30): The attached digital copy is to be used solely for the purposes of research, private study or education. Any other use may require the authorization of the copyright owner of the work in question.

Canadian copyright law permits the printing of a single copy of this digital copy and requires that you cease using the digital copy within five business days from the day on which you first used it. The digital copy must not be stored, forwarded or distributed. It is recommended that you destroy the digital copy five days after its first use. [Name of Library goes here] is not responsible for the failure to abide by this policy, and you may be subject to liability for copyright infringement. It is a federal offence to infringe copyright.

Photocopier Signage

If an individual, or library acting on their behalf, infringes copyright law by photocopying an original work, the organization that owns the photocopier may share some of the liability for that infringement by having made the photocopier available in the first place. The Supreme Court of Canada has found that an organization can reduce its risk of liability by affixing a notice to the photocopier that warns users of the potential for copyright infringement. The disclaimer below is adapted from the photocopier notice reviewed positively by the Supreme Court of Canada in 2004 in a landmark copyright infringement case.

Copyright Notice: 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 users of these machines.

Source: C-42, section 30.3.

Please note in order to resort to the 30.3 infringement exception (as a defence to copyright infringement), you must have an agreement with a collective society or an individual copyright holder. There is no absolute requirement for a library to have an agreement with a collective society.

This is provided for information purposes only and is not intended to be legal advice. You should contact your legal counsel if you have any questions on this issue.

Hospital Copyright Policy

As a standard risk management practice, hospitals should develop a corporate copyright policy. By developing a policy that indicates the organization's support for and its intention to comply with the Act, the hospital can be seen to be promoting copyright compliance and may be able to lessen its risk for copyright infringement by its staff and physicians.

Staff and physicians will benefit from guidelines that can include:

- a listing of the types of materials covered by the Copyright Act
- an explanation of what constitutes fair dealing and infringement
- guidelines for determining when one should obtain permission to use a work

- the hospital's policy for addressing claims of infringement;
- the hospital's claim of ownership in works created by employees, including materials on the hospital website.

FOR MORE INFORMATION

Copyright Act

<http://laws.justice.gc.ca/en/C-42/index.html>

Copyright Board of Canada

<http://www.cb-cda.gc.ca/>

Canadian Copyrights Database

<http://www.ic.gc.ca/app/opic-cipo/cpyrghts/dsplySrch.do?lang=eng>

Canadian Intellectual Property Office

<http://www.cipo.ic.gc.ca/eic/site/cipointernet-internetopic.nsf/eng/Home>