

Copyright and OERs



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<http://umanitoba.ca/copyright>

This presentation is for informational purposes only and is not intended to be official legal advice.



Common copyright questions

- What is copyright?
- How do you get a copyright?
- Who owns copyright?
- What does not have copyright?
- What are the differences between traditional and open publishing?
- What are Creative Commons licenses?
- How do you use and choose Creative Commons licenses?
- Where can I find Creative Commons licensed content?
- What about copyright exemptions?
- Because everyone's talking about it, what about Generative AI?



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What is copyright?



Statutory right under the Copyright Act



Copyright is the right of the copyright owner to control how a work (literary, artistic, dramatic, cinematographic, musical) is reproduced or made available to the public, and to request economic compensation



Work must be original, “fixed”, and take skill and judgement

Moral rights – association, integrity, attribution



Copyright law is territorial

Apply Canadian law when copying in Canada



Open Educational Resources work with copyright

Open licensing works with rights granted by copyright/moral rights



What is copyright, cont.

- Users of copyright protected works also have rights in the form of copyright exemptions (fair dealing)
- Moral rights are reputational rights (association, integrity, and attribution)
- Work = image (e.g., photograph, figure, diagram, chart, table, map, cartoon, clipart, architectural drawing), chapter, article, essay, script, blog post, painting, musical score, song, video, actor's performance, computer program, book, etc.



How do you get a copyright?

Low bar to being granted copyright protection in Canada

- Registration is not required
- No © symbol does not mean no copyright protection

Start with the assumption materials are copyright protected

- If you want to reuse material in an OER, investigate whether there are bases for use
 - Did you create the content or have permission for reuse from the author/artist/etc.?
 - Open Licenses like Creative Commons
 - Public Domain
 - Government work **with an open license**
 - Government works have “Crown Copyright”, not all levels of government have open reuse licenses.

Who owns copyright?

- Copyright is normally owned by the author/creator but
 - may be owned by an employer unless there is an agreement to the contrary (ex. UMFA Collective Agreement)
 - may be assigned (given to a publisher, company, individual)
 - may be jointly owned (2 or more authors write something and it's difficult to distinguish who wrote what)
 - may be inherited (copyright continues 70 years after the year of death of the creator)



Ideas vs. expression

- Some things cannot be copyright protected (e.g., ideas, facts, statistics, data, equations, algorithms, news, simple drawings).
- Copyright protects *expression* of ideas, not ideas themselves.
- Difference between copying someone's figure, and creating or drawing your own original figure, chart, diagram, etc. based on someone else's ideas, facts, statistics, data or news. Add "based on" statement with citation.
- Permission might be needed to modify or adapt a work (due to moral rights - need to retain the integrity of the work or intent of the creator).



Public Domain



Figure 12. Elliott and Fry.
“Rudyard Kipling”.
Retrieved June 9, 2011.
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- Copyright is not perpetual - in general, copyright lasts for **70** years after the year of death of creator
 - Note: this term was recently extended from 50 years—in 2043 the 70 year period will take effect, and until then only works by creators that died in or before 1971 will be in the Public Domain
 - Copyright terms may be different for different types of works (ex, sound recordings, video recordings)
- When the copyright term expires, the work enters the [public domain](#).
- Public domain work is not protected by copyright - can be copied, distributed, adapted, modified, etc. without permission.
- Some public domain works can be found at [Gutenberg Canada](#) and [Project Gutenberg](#) and [Wikipedia: Public Domain Resources](#)

Traditional Publishing vs. Open Publishing

- Traditional publishing agreements and Open publishing agreements are similar except for copyright
 - Traditional publishing usually has a copyright transfer agreement or exclusive license
 - The publisher is often transferred copyright to own, or given the exclusive right to publish
 - Prevents the author from further using or publishing their work without permission from the publisher
 - Open publishing the author retains copyright
 - A Creative Commons license is assigned to the work that allows anyone to use it if they follow the license terms
 - The author may also reuse and publish their work further as they choose



What are Creative Commons licenses?

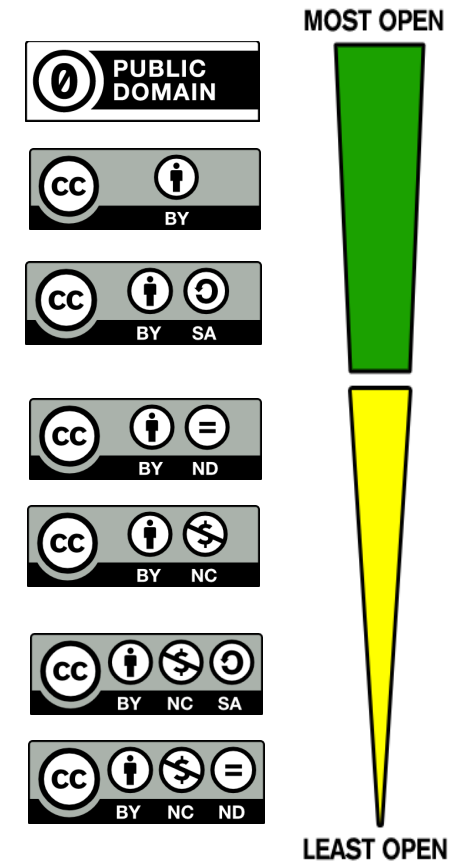
- [Creative Commons](#) is an organization dedicated to sharing knowledge
- Developed a series of 6 legal licenses and a Public Domain dedication so that creators can share their work
- Creative Commons licenses are good for creators because they can put conditions on the use and sharing of their work
 - And good for users because they know a work may be reused as long as they follow the conditions of the license



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- If you want to do something beyond the terms of the licence you can try requesting permission from the copyright owner
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Considerations when using CC Licenced Material



Only the copyright owner or someone with permission from the copyright owner can put a CC licence on a work



There can be layers of materials and licensing in a work (multiple authors, images)



Check if there are any exclusions from the Creative Commons license in the work (“Unless otherwise indicated this work is licensed under Creative Commons”)



Creative Commons licences have been found legally valid in some jurisdictions



Even though Creative Commons materials are free to use it is important to follow the licence terms or it may be a copyright infringement



Request a copyright review from the Copyright Office (um.copyright@umanitoba.ca) – we can identify potential concerns and solutions

License compatibility

	PUBLIC DOMAIN	PUBLIC DOMAIN	BY	BY SA	BY NC	BY ND	BY NC SA	BY NC ND
PUBLIC DOMAIN	✓	✓	✓	✓	✓	✗	✓	✗
PUBLIC DOMAIN	✓	✓	✓	✓	✓	✗	✓	✗
BY	✓	✓	✓	✓	✓	✗	✓	✗
BY SA	✓	✓	✓	✓	✗	✗	✗	✗
BY NC	✓	✓	✓	✗	✓	✗	✓	✗
BY ND	✗	✗	✗	✗	✗	✗	✗	✗
BY NC SA	✓	✓	✓	✗	✓	✗	✓	✗
BY NC ND	✗	✗	✗	✗	✗	✗	✗	✗

“Except as otherwise indicated, this work is licensed under [CC BY-NC-SA](#)”

How to choose a Creative Commons License?

- Who created the resource?
 - Do you own the copyright? Are there multiple authors or an employer who has a copyright interest?
- Creative Commons has a [license chooser](#)
- Think of uses you would like others to make (what are your goals with the work?) and choose terms that are most compatible
- CC Licenses are irrevocable
 - They bind users – creators can use materials other ways
 - License remains valid on materials that have already been copied



Government Works

- Government works are subject to Crown Copyright
- Many levels of government are adopting Open Licences – important to confirm because not uniform across Canada
- [Open Government License - Canada](#)
- [Open MB Information and Data Use License](#) allows you to copy, modify, publish, etc. as long as you:



- Acknowledge the source, include the attribution statement where practical, and [link back to the license](#)
- US federal government works are public domain in the United States, many states have similar legislation

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Where to find Creative Commons licensed resources?



FIND CONTENT YOU CAN
SHARE, USE, AND REMIX.

Enter your search query

Search

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ccMixter

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Image

Jamendo

Music

Nappy

Image

Open Clip Art

Image

Openverse

Media

Sketchfab

3D Model

SoundCloud

Music

Thingiverse

3D Model

Vimeo

Video

Wikipedia Commons

Media

YouTube

Video

<https://search.creativecommons.org/>

Other sources of compatible materials

- [Wikipedia](#)
 - [Wikimedia](#)
 - [Flickr: The Commons](#)
 - [Pexels](#)
 - [Pixabay](#)
 - [Unsplash](#)
- Many of these sites like Pexels, Pixabay and Unsplash have mixed Creative Commons, site licenses (the [Pixabay license](#), etc.) and sponsored content. It's important to review the licensing to confirm it is compatible for every image you would like to use



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How to Copyright a Video - The ... dacast.com



A new trend in copyright litig... managingip.com



What You Must Know About Copyrights ... copyright.laws.com



Copyright Logo, history, meaning ... logos-world.net



Copyright - Intellectual Property Office ipo.gov.tt



Copyright Symbol 100logos.net



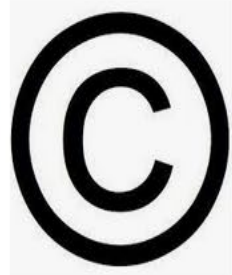
Video copyright: How to avoid getting ... digital.gov



European Environment Agency eea.europa.eu



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How to Copyright Your Content



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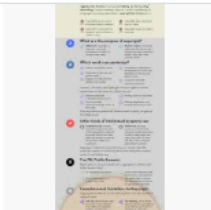
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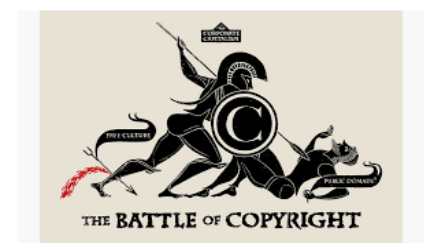
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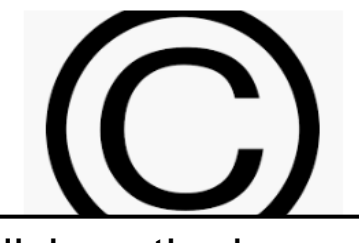
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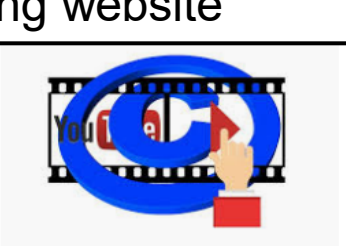
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Good Fair Use Copyright Example in School: "Communities" and The Lion Sleeps Tonight
by Wesley Fryer, Ph.D. (@wfryer)

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Google Search - images

For more discussion of the recent Berkeley, California copyright case involving screening a Disney movie at school without prior licensing, check out last week's episode of "The EdTech Situation Room" (Episode 164) in which Jason Neiffer (@techsavvyteach) and I analyzed and explain some of the lessons learned for teachers and school administrators from that situation.

Select Category ▾

Good Fair Use Copyright Example in School: "Communities" and The Lion Sleeps Tonight

by Wesley Fryer, Ph.D. (@wfyryer)



"Good Fair Use Copyright Example in School" (CC BY 2.0) by Wesley Fryer

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On this day..

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Copyright exemptions

- Exercise caution with including materials under copyright exemptions
- Cannot apply UM Copyright Guidelines/Fair Dealing Guidelines allowances for the purpose of OER
 - The scope of reuse and sharing is different within a closed learning management system than a publicly accessible OER
- A Code of Best Practices for use of Fair Dealing in OER will be released by the Canadian Association of Research Libraries soon
- Fair Dealing materials are not “fully open” (no reuse rights)
- If you are thinking of using materials under Fair Dealing, contact the Copyright Office (um.copyright@umanitoba.ca) for further guidance

Generative AI

- Generative AI is a sophisticated text/image prediction device
- By training on large amounts of textual and visual data, the model predicts a response based on prompts entered by a user
- Many issues around the use of Generative AI are ethical
 - Plagiarism: passing off AI generated content as your own
 - Bias: the materials that generative AI is trained on can lead to bias in output
 - Hallucination: Generative AI as a predictive device can sometimes create answers, or citations that “look correct” from a predictive standpoint, but are inaccurate
- Additional legal issues – all of these are moving targets



Generative AI

- Multiple legal uncertainties with Generative AI:
 1. Unknown whether human authorship is necessary for copyright to subsist (all generated content may be “Public Domain”)
 2. We can only license content we have the right to license (if no copyright, no license)?
 3. Many popular generative AI tools (ChatGPT, MidJourney, etc.) have been trained using copyright exemptions (Fair Use or Fair Dealing in Canada) – currently uncertain whether this is legally permissible
 4. Some generative AI tools have created images that are almost certainly copyright infringements (see: [Generative AI Has a Visual Plagiarism Problem - IEEE Spectrum](#))



Questions?

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