Legal Disclaimer

• The content in this presentation & document are provided for informational purposes.
• They do not constitute legal advice.
• Before implementing a copyright procedure & policy, users should consult with their school or institutional counsel & copyright advisors.
Objectives

- Understand copyright in Canada
- Understand copyright as applies to open resources & public domain
- Understand fair dealing
- Begin to apply understanding to resource selection
- If time—use of web 2.0 tools
Myths of Copyright

• Only published works have copyright.
• If posted online, a work loses copyright.
• If I give credit or link back, I can use the work.
• If there is no licensing symbol, I can use the content however I want.
• If I slightly change the work, I can use it.
• All copyright law is the same.

Copyright

• Copyright is the power of an author/creator to reproduce a work & say how it is used.
• An author can be a person, an organization, business, government, etc.
• Once a work is created the author/creator automatically has copyright.
• Copyright extends to published & unpublished works.
• The copyright holder can extend his/her permission(s) to others.
Copyright

- Any original creative work is covered by copyright.
- Ideas and data are not covered by copyright, though how they are formatted, communicated, etc. can be copyrighted.
- “Transformative” works that remix and repurpose existing work of others to create a substantially new message or idea can be copyrighted.
- Copyright law is different in each country.
- In Canada copyright typically lasts 50-75 years after the death of last surviving creator.
Copyright & You

- If you created it, you get to decide how the copyright is handled
- If you didn’t create it, you need to respect how the author/creator determined the copyright should be handled
  - If it’s not yours, & you want to use it, you need to determine what the copyright implications are
  - You need to determine & what copyright scenario applies & if relevant, who “owns” it.
  - You may not use sources where it is reasonably evident the source is infringing on the copyright of another
Copyright & Your Courses

• You can comply with copyright by
  – Using materials that clearly fall within the Canadian fair dealing provisions of the Copyright Act
  – Using materials according to any specific licensing attached to them
    • Public domain
    • Open resources
    • Purchased royalty free content
  • Obtaining permissions for use where fair dealing does not apply
Copyright & Your F2F Courses

• Face to face more leeway
  – limited in scope, access, distribution, & duration.

• Teacher can show non-infringing video copy (DVD rental from a store, purchased copy, borrowed from library, etc.) in class
  – If a teacher has a video subscription use governed by the terms of service (e.g. household or personal use only).

• Generally can reproduce an entire work for in-classroom display/experience purposes—including photos, video, audio, text—and reproduce it for exam purposes if a similar version isn’t commercially available.
Canadian Law: Copyright & Fair Dealing

• Copyright is about respecting the author/creator’s rights

• Fair Dealing is about respecting the user’s rights.
  – Other countries that use fair dealing:
    • UK, Australia

• “Fair dealing” is DIFFERENT than “fair use”
  – US is a “fair use” country with more emphasis on whether use is commercial/not
Fair Dealing

- Canadian copyright law allows for some specific types of use without needing to obtain copyright permission.
- This is called 'fair dealing'.
- The specific uses are outlined in the Canadian Copyright Act (Stage 1)
- The requirements for fair dealing were developed by judicial review (not explicit in law)(Stage 2)
Fair Dealing: Stage 1

• Under fair dealing, Canadians can use copyrighted materials only for these specific purposes
  – education, research, private study, criticism, review, news reporting, satire or parody
• If use agrees in purpose, Stage 1 requirements are met
• [Ensure that source of content is copyright compliant]
Fair Dealing: Stage 2

• Stage 2: 5 additional aspects weigh whether your use is fair:
  – character of your use
  – amount of the work to be used
  – whether there are non-copyrighted alternatives;
  – whether the use will have a negative impact on the work.
Stage 2: Character

- For character: how content is used; comparison to proven customary practice in the industry
  - Multiple copies with wide distribution are generally considered unfair
  - Single copy for specific purpose and/or restricted distribution generally considered fair.
  - Are users explicitly directed not to copy or redistribute content?
  - There should be no circumvention of digital locks to access the content.
Stage 2: Amount

• For amount:
  – Trivial amounts don’t count (quotes, etc.).
  – Generally guidelines
    • 10% of a work
    • 1 chapter from a book
    • 1 article from a journal
    • 1 work from a collection (includes 1 musical score from larger collection)
    • full newspaper article
    • single entry from reference material, annotated bibliography, etc.
Stage 2: Amount & Alternatives

• For amount:
  – Must be limited to just the necessary content (no extras).
  – May no reproduce a majority of a work by breaking it into individual smaller chunks.

• For alternatives:
  – Are there non-copyrighted versions of the work that could be used?
Stage 2: Nature & Effect

• For nature:
  – Should work be widely disseminated?
  – Might not apply if documents confidential.

• For effect:
  – Is there a negative impact on the original work?
  – Would this copy compete with a copy for sale or negatively impact a publisher's sales?
By law only content used for criticism, review, & news reporting must be cited, but academics should always cite their sources!
Fair Dealing & Perceptual Challenges

Note: This slide is an addition to content shared in F2F presentation

- According to Copyright Matters! (3rd Ed):
- Alternative formats are provided through production centres
- Alternative formats include braille, audiobooks, digital texts
- Educators/students can make copies for students with “perceptual disabilities” if it is “a literary, dramatic, musical, or artistic work (but not an audiovisual work) in a format designed for a person with perceptual disability” but that may not include creating large print books (p. 5)
- Educators/students allowed to translate or adapt and public performances also permissible if they don’t already exist commercially
Further Fair Dealing Questions?

Note: This slide is an addition to content shared in F2F presentation

- If you have further questions like can you record something from TV and share it in class, public performances of musical works, etc. refer to
Free Use Resources

• Some resources have no copyright or are released under “open licenses”
  – Content in the “public domain”
  – Content licensed under Creative Commons, or GNU FDL

• Content in public domain has no copyright restrictions

• Materials with “open licenses” have specific restrictions or sets of restrictions
Public Domain

• Content enters if copyright expires or it is directly put into it
  – some countries don’t accept licensing into PD by an author/creator

• How assigned to PD varies by country

• Canada: usually enter around 50-75 years after either the last surviving author dies, the work was created or the work was published.
Public Domain: Special Cases

• Photos taken pre1949 in PD
• Federal & provincial government publications are under Crown Copyright--NOT necessarily in PD
  – Most US government publications are PD
• Unpublished documents from government never enter PD.
• New versions or translations of a PD work not covered by PD unless specifically licensed as PD.
• Though not legally required, academically speaking, you should cite your sources in PD
• For more on PD see Creative Commons Public Domain (https://wiki.creativecommons.org/Public_domain) or Copyright at UBC: Public Domain (http://copyright.ubc.ca/guidelines-and-resources/support-guides/public-domain/)
Public Domain License

• Creative Commons “CC0” licence: “all rights granted”
  – Many jurisdictions don’t recognize intentional waiving of copyright
Open Licenses & Creative Commons

- “Open” licenses designed to allow more flexibility in use of authors’ content by others
- Creative Commons is the most prevalent open license
- Irrevocable license, expires when copyright would expire
- Every CC license (except CC0) requires attribution
## Creative Commons License Requirements

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<th>License</th>
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<td>No derivative works can be created</td>
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Name That Creative Commons License
Creative Commons License Issues

• More than 90% of CC photos are not attributed
• More than 99% of CC photos are not attributed properly
Copyright Permissions

• Need permission when content to use is not yours, not in PD, or does not meet fair dealing criteria

• Identify and contact copyright holder and ask for permission
  – Anonymous & Orphans? Apply to Copyright Board of Canada for permission

• Model Permission Letters (Columbia University)
  http://copyright.columbia.edu/copyright/permissions/requesting-permission/model-forms/

• Ensure source of content is copyright compliant
Copyright Permissions

- Requesting permission does not guarantee you’ll get it
- You may have to negotiate with the copyright holder
- If you don’t like their terms, don’t use the content—find alternatives
- If you accept the terms, you are obligated to follow them.
Licensed Digital Content

- Digital content can be purchased by a school or an individual.
- Each digital content provided will have its own license agreement or terms of service that must be followed
  - E.g. Electronic library subscriptions
    - No making available to people other than “approved users”
    - Used only for education or research—not commercial gain
    - No redistribution or republishing
    - No sharing your access with blocked users
  - E.g. royalty free art
Using Videos

• Use only reasonably compliant sources
• Use of brief news clips for purposes of comment, review etc. falls under fair dealing
• Uses of brief song clips for purposes of comment, etc.
• Incidental captures of copyrighted works (image, video or music \textit{organically} in background at time of filming; must be without pre-arrangement)—OK
  – Must not be focus of the new work, be requested or directed
• Avoid—full clips of copyrighted work in their entirety without express permission
• If content not transformative & seen to substitute for original—seen as infringing

More on Videos

- Video portion of mash-ups likely useable, but audio track tends to be a whole song
- Performance of a song roughly equivalent to a “cover” requiring permission
- Video clips for purposes of review or criticism would be covered if not substantive portion of work & original cited
- Game walk throughs/commentaries—if commentary & gameplay are original—consider it ‘transformative’

“Transformative” works

- Transformative work may come in the form of
  - Mash ups
  - Remixes
  - Recombination
  - Juxtaposition
  - Addition of own/new expression (translation, subtitles, animation, sound)

- “The recombinant new work has a cultural identity of its own and addresses an audience different from those for which its components were intended.”

- Not OK: little change to original, use of unedited substantial portions of original, exploitation of popularity of original without adding value

Some Tips for Fair Dealing

• Try to collect content from a variety of sources to avoid over-reliance on a single work (likely to use a substantive portion)
• Keep strictly to the necessary content
• Cite your sources
Alternatives to Fair Dealing?

- Search for appropriately licensed alternative content
    - Set “usage rights” to desired “openness”
  - Reverse image search on tineye.com
  - Google Advanced Search [http://www.google.com/advanced_search](http://www.google.com/advanced_search)
    - Set “usage rights” to desired “openness”
  - Search OER directories & sites
  - Search Columbia University Libraries/ Information Services, Public Domain Resources
  - Search University of Toronto Libraries Images and Visual Resource Collections: Public Domain
    - [http://guides.library.utoronto.ca/content.php?pid=261020&sid=2155173](http://guides.library.utoronto.ca/content.php?pid=261020&sid=2155173)
  - Search Google with “Creative Commons” and your content term

- Link out to publicly accessible content from copyright compliant sources
  - E.g. National Film Board of Canada [https://www.nfb.ca/](https://www.nfb.ca/)
  - Khan Academy—most content is CC-BY-NC-SA [https://www.khanacademy.org/](https://www.khanacademy.org/)
  - TeacherTube uses CC-BY-SA for teacher contributed content

- Alter your usage to comply with the Stage 1&2 requirements
  - E.g. use a smaller portion; add a commentary, etc.
Where to Find OERs

• General Open Access & Public Domain Resources, Ryerson University Library & Archives [http://library.ryerson.ca/copyright/resources/teaching-resources/general-resources/](http://library.ryerson.ca/copyright/resources/teaching-resources/general-resources/)


Some Helpful Resources

- jhengstler’s Prezi, “A Canadian Copyright Decision Tree for BC Educators” (link available shortly)


- Model Permission Letters (Columbia University) [http://copyright.columbia.edu/copyright/permissions/requesting-permission/model-forms/](http://copyright.columbia.edu/copyright/permissions/requesting-permission/model-forms/)

- For any unanswered situations re. copyright & fair dealing, consult
A Canadian Copyright Decision Tree for BC Educators

- jhengstler’s Prezi, “A Canadian Copyright Decision Tree for BC Educators”
  - Link Available Shortly
- Taking a tour to see how this new knowledge applies to selecting educational resources
Thank You!

• Your time is valuable.
• I hope you felt you received at least comparable value for your time and ProD funding that brought me here.
• If you have ?s:
  • Julia.Hengstler@viu.ca
  • Twitter: @jhengstler
  • (250)753-3245 ext. 2630 VIU Office
References

• Creative Commons. (n.d.). About the Licenses. https://creativecommons.org/licenses/.
• http://foter.com/blog/how-to-attribute-creative-commons-photos/
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• Scholarly Communication and Copyright Office, University of British Columbia (UBC). (n.d.) Fair Dealing Requirements for UBC Faculty and Staff. http://copyright.ubc.ca/requirements/fair-dealing/
• (n.d.) Copyright Requirements for UBC Faculty and Staff. http://copyright.ubc.ca/requirements/copyright-requirements/