

Policy History
Policy No. IM1
Approving Jurisdiction: President
Administrative Responsibility: Vice President Finance & Administration
Effective Date: April 2006

Copyright Compliance Policy

The terms of this policy are intended to be procedural guidelines only and not legal advice. The terms are subject to any changes in applicable laws and the terms of the Access Copyright licence agreement, as may be amended from time to time.

DEFINITIONS

Access Copyright (formerly CANCOPY): the Canadian Copyright Licensing Agency is a not for profit agency that represents creators and publishers in the administration of their reproduction rights and license access to copyright works.

Copyright: Copyright is the sole right to produce, reproduce, or allow others to reproduce, a work or any substantial part, in any material form. In Canada copyright protection begins immediately upon creation of a work, rather than upon publication, and in most cases exists until 50 years after the creator's death. In accordance with the Copyright Act, it is assumed that, unless otherwise proven, all material is subject to copyright protection. This includes materials published in the foreign countries signatory to the Berne and Universal copyright conventions.

Exhibition Rights: Artistic works generally include paintings, drawings, maps, charts, plans, photographs, engravings, sculptures, works of artistic craftsmanship and architectural works of art. The copyright owner has the sole right to present his/her artistic works at a public exhibition for purposes other than sale or hire.

Fair Dealing: The Copyright Act indicates that fair dealings with a work for the purposes of research, private study, criticism, review, or news reporting is not an infringement of copyright. (The generally accepted criteria for defining fair dealing include: the purpose and character of the use, the nature of the copyrighted work, the amount and substantiality of the portion used, and the effect upon the work's potential market.) Fair Dealing applies to all works and does not require the permission of the copyright owner nor the paying of royalties.

Moral Rights: Moral rights means an author's right to the integrity of the work and the right to be associated with the work. No one is allowed to distort, mutilate or otherwise modify a work in a way that is prejudicial to the author's honour or reputation. In addition, the work may not be used without permission in association with a product, service, cause or institution in a way that is prejudicial to the author's honour or reputation. Copyright ownership or assignment does not automatically waive

the moral rights. Waivers of moral rights must be sought separately, therefore, permissions may, in some circumstances, be required from both the copyright holder and from the creator.

Performance in Public: The Copyright Act does not clearly state what is meant by public performance of a work. The concept of public performance is most easily defined by describing what it is not: it is not a performance that takes place in a home or in a domestic setting. Schools and libraries are not considered home settings and therefore any performances in these settings are considered performances in public.

Public Domain: Refers to works that belong to the public and thus can be used without permission and without paying royalties, such as works for which the copyright protection has lapsed (usually 50 years after the death of the copyright holder) or works that have been given to the public by the copyright owner.

PURPOSE OF THE POLICY:

To ensure compliance with the Canadian Copyright Act, R. S.C.1985,C.42, as amended from time to time.

- It is the responsibility of all employees and students to comply with the Canadian Copyright Act and the terms and conditions of any licensing agreements that Kwantlen Polytechnic University has entered into or may enter into.
- All users must assume that copyright protection exists whether specifically stated or not. Protection of works is automatic, begins immediately after creation, and continues until 50 years after the creator's death.
- Employees and students must ensure that all material that they use in their work is either in the public domain, is covered by the ACCESS COPYRIGHT license, or that they have written copyright permission from the copyright owner.
- Kwantlen Polytechnic University equipment, services or other resources shall not be used to support infringement of copyright.
- Users may be subject to disciplinary action for uses that infringe copyright or other intellectual property rights.
- Kwantlen Polytechnic University will honour all copyright rights attached to works. Appropriate consent and assignments will be obtained when artistic works are purchased by the University. Appropriate consents will be obtained when borrowed artistic works and student and employee art are exhibited. The University will honour the moral rights of creators and will obtain waivers when necessary.
- Kwantlen Polytechnic University will provide information including, but not limited to, online Copyright Guides, to ensure that all employees and students are aware of the terms of the Copyright Act of Canada, and will take all reasonable steps to ensure that its employees do not violate the law.
- The Vice-President Strategic Services is responsible for signing the Access Copyright license.

- The Dean, Learner Resources is responsible for the implementation of the copyright policy and may delegate authority for the procedures.

COPYRIGHT PERMISSION:

Certain activities that take place on premises of educational institutions are exceptions to copyright protection. It is not necessary to seek copyright permission for such activities. This is not a comprehensive list but rather a list of activities likely to occur in the University:

- copying which falls within the limits and guidelines of the Access Copyright Licence agreement
- any fair dealing with any work for the purposes of private study, research, criticism, review or newspaper summary;
- use of excerpts for examination purpose
- reading or publicly reciting a reasonable extract from a published work for educational purposes
- making a manual reproduction of a work onto a dry-erase board, flip chart or other similar surface intended for displaying handwritten material
- making an overhead transparency for projecting on an overhead projector for educational purposes
- the live performance in public of a musical work for educational or training purposes and not for profit.

Copyright permission must be obtained for the following activities as they are not covered under either the concept of fair dealing or the Access Copyright license:

- Copying an entire book (with some exceptions for out of print works and this would generally involve paying of a fee)
- Cumulative copying from the same published work (copying that would result in a substantial part of that work being copied)
- Copying published sheet music or workbooks
- Copying unpublished works
- Changing or adapting the published work
- Copying an original work of art

For material not covered under the ACCESS COPYRIGHT license, or the concept of Fair Dealing or is not in the Public Domain, it may still be possible to use/copy BUT permission must be obtained. It is the responsibility of the user of the work to obtain permission. Depending on the type and/or use of the material the Bookstore or Library may be of assistance with clearances or in providing direction for obtaining permissions.

REPRODUCTION AND USE OF COPYRIGHT MATERIALS:

Access Copyright: Kwantlen Polytechnic University has an agreement with ACCESS COPYRIGHT (formerly CANCOPY), the Canadian copyright licensing agency that administers rights, collects royalties and distributes the money to the copyright owner. The ACCESS COPYRIGHT license applies to print material only and covers the making of photocopies for distribution to students, including class handouts and for use in interlibrary loan, and the making of photocopies for sale, such as course packs. For the first type of copying Kwantlen pays an annual fee per FTE and, for the second, royalties are paid per page and records kept through the Bookstore. There are exceptions to what is covered under the license, including limits to the proportion of a work that can be copied. The license limits making single or multiple copies for free distribution to either 10% of a work or the whole of a chapter which is 20% or less of a book, or a short story, poem or journal article from a book or periodical issue containing other works. Material included on the ACCESS COPYRIGHT Post-Secondary Exclusions List is not covered. The limits for making copies for Course Packs are different from that of free distribution. (The Bookstore will be able to provide details). If the material is not covered by the ACCESS COPYRIGHT license it is the responsibility of the requester to obtain permission, and it is the requester's responsibility to send a copy of the permission letter to the library, bookstore, printing department, etc., as appropriate. If a fee is required, the requesting discipline bears the cost.

Audiovisual Materials:

- All videos/DVDs shown in a classroom setting must have Public Performance rights. The majority of videos/DVDs in the Kwantlen collection are purchased with these rights. Documentary or educational videos that have been borrowed from a public library or a retail video store should not be shown in the classroom, as they generally are not purchased with public performance rights.
- A large number of feature films are covered under Kwantlen's Feature Film license so can be borrowed from public libraries or rented from video outlets and shown in the classroom. For more information refer to the Feature Film Brochure found online through the Library web site. <http://www.kwantlen.ca/library/Services/feature.pdf>
- All copies shown in an educational setting must be legal copies or copies made under the very limited exceptions for Off-Air taping.
- Copyright permission is required when transferring from one audiovisual format to another or if altering an item in any way.
- The Audiovisual Librarian will process the requests to obtain copyright permission (public performance rights) for all videos and DVDs in the Library collection.

Off-air Taping: With very limited exceptions it is illegal to tape a television or radio broadcast and use it in a classroom situation or anywhere on institutional premises. The Copyright Act permits limited off-air taping in the following cases: a news or news commentary program may be taped and retained for a year, after which royalties must be paid for each public performance or the tape erased. Documentaries are specifically excluded from this category and may not be taped under its provisions. Any program may be taped for evaluation or preview purposes and retained for 30 days. It cannot be used in a classroom and must be erased after 30 days.

Audiovisual Production: All material to be included in an audiovisual production must be free of copyright restriction or permission must be secured. This includes the use of print, graphic, audio and visual material as well as the recording of a performance of a work covered by copyright. Gathering permissions to use copyrighted material in any form in audiovisual productions is the responsibility of the initiator of the production.

Computer Software: Employees and students are not to use unlawfully duplicated computer programs for instructional, administrative or other purposes. Software you have purchased is not available for making copies or loading on a network, unless those rights have been negotiated. Please read the license agreements of the software you have purchased and abide by it. IET can provide assistance in determining licensing possibilities and interpreting this policy.

Course Manuals (Bookstore/Printing Manual Requisition): When submitting a printing manual requisition form to the Bookstore the requester must provide a complete bibliographic citation so the source can be confirmed as covered by ACCESS COPYRIGHT and/or so copyright clearance can be obtained.

Equipment: Audiovisual Equipment: Borrowers of Library audiovisual equipment will be required to sign a form stating that copyright will not be violated when they borrow any piece of equipment from the Library.

Kwantlen Polytechnic University Copying Equipment (including Photocopiers & Scanners): An appropriate notice informing users of Copyright policy and that the machine must be used in compliance with Canadian copyright laws and Kwantlen Polytechnic University Copyright Policy will be placed on and/or near all equipment capable of duplicating or digitizing material.

Library Reserve Collection: Books & Journal Articles: The ACCESS COPYRIGHT license allows up to 10% of a book or a maximum of one chapter of a book if it is 20% or less of the book, or a photocopy of a print journal article to be placed on Reserve without applying for individual copyright clearance. There are some exceptions to what can be placed on Reserve under the ACCESS COPYRIGHT license. If copyright clearance is necessary, it is the responsibility of the requestor to obtain the copyright clearance and provide the library with a copy of the permission.

Licensed Journal Databases: The Library has entered into license agreements with several databases that may permit downloading and printing from these licensed resources. Each database has specific terms and conditions that vary from product to product. Making a single copy for personal, non-commercial use is generally permitted. The Library will be able to provide details.

Live Performances: Live performances by students are permissible as long as certain conditions are met including: must take place on the premises of the education institution; must be for educational or training purposes; must not be for profit; must take place before an audience consisting primarily of students and instructors of the educational institution; must not involve a motive of gain. (e.g. performing a play in class would be considered allowable).

Material off the Internet: Most of the material on the Internet is protected by copyright, including postings to news groups, email messages, images, photographs, music, video clips and computer software. Permission from the copyright holder must be obtained prior to using text, graphics, images, sound and video from the Internet unless the material is clearly in the public domain or permission to use is explicitly stated on the web site. The ACCESS COPYRIGHT license does not cover electronic material.

Music: Musical scores, words of a song and musical performances are generally copyright protected.

Photocopying/Printing Requisitions: The photocopying/printing requisition form to be signed by the requester will carry the guarantee of the requester either that the material to be copied is not protected by copyright or that permission of the copyright holder has been obtained and is attached to the printing requisition form. It will be the requester's responsibility to secure that permission in writing before submitting the request to printing. Such permission will be displayed on the document to be copied by a notice stating:

“this work is reproduced with permission of (name of copyright holder)” and will be signed by the requester and dated.

Web Pages: employees must ensure that all material used in the production of their Web pages is copyright free, is covered by an educational exception or a licensing agreement or that the appropriate permissions have been obtained from the copyright owner.

For additional guidelines refer to:

Copyright Guide produced by the Library (although not intended as legal advice nor as formal Kwantlen Polytechnic University policy it is a good source of information and guidelines; found online at:

<http://www.kwantlen.ca/library/Services/CopyrightQFacts.pdf>

RELATED POLICIES:

IM3 *Information and Education Technology Usage*