

Copyright Matters!

Some Key Questions & Answers for Teachers

**5th
Edition**

**Wanda Noel & Jordan Snel,
Barristers and Solicitors**



cmec

©2022

Council of Ministers of Education, Canada

Canadian School Boards Association

Canadian Teachers' Federation

This document may be freely reproduced without obtaining the permission of the authors, provided that no changes whatsoever are made to the text.

Available at www.cmec.ca, www.cdnsba.org, and www.ctf-fce.ca.

ISBN: 978-0-88987-236-3

*The copyright issue is dealt with within the CMEC Copyright Consortium, composed of the ministers of education of the provinces and territories, except Quebec.

Three ways to use this resource:

1. Search it

- Use the magnifying glass in Adobe Acrobat.
- Type in what you are looking for (e.g., television).



Note: The index provides useful search terms.

2. Use the bookmark icon in Adobe Acrobat

- Click on the bookmark beside the information you are looking for (e.g., for “fair dealing,” click on the bookmark beside #3).



3. Use the index

- There is an index at the end of the document.
- Click on the page number in the index to go to the section you want.

Table of Contents

- 1. What is the purpose of this booklet? 1
- 2. Why is copyright important? 1
- 3. What is fair dealing? 2
- 4. Does fair dealing permit the making of a digital copy from a print source? 4
- 5. Can teachers copy or post an entire musical score or does the 10 percent limit in the *Fair Dealing Guidelines* apply? 4
- 6. Can a teacher copy for instruction?..... 4
- 7. Can a teacher copy materials intended for one-time use? 5
- 8. Can a teacher copy for tests and examinations? 5
- 9. Can teachers and students use statutes, regulations, and court decisions? 6
- 10. What rights do students with perceptual disabilities have? 7
- 11. What rights do school libraries have? 7
- 12. Can teachers play a sound recording or turn on a radio for students to listen to, or turn on a television for students to watch? 8
- 13. Can students perform a work protected by copyright, such as a play, on school premises? 9
- 14. Can music be performed without the copyright owner’s permission? 9

15. Can students and teachers use copyright-protected works to create new works?	12
16. Can teachers copy programs from radio or television?	13
17. Can teachers show an audiovisual work (such as a DVD or video) on school premises without infringing copyright?	14
18. Can teachers copy an audiovisual work at home and show it in the classroom?	15
19. Can lessons be streamed live to students, or recorded and made available online for students at a time of their choosing?	15
20. Can teachers copy computer software for educational use?	16
21. Can teachers and students copy from the internet?.....	16
22. Can teachers and students break digital locks to use copyright-protected materials they have the legal right to use?.....	17
23. Are student-created works protected by copyright?	18
24. Do copyright laws and the <i>Fair Dealing Guidelines</i> apply to online teaching and face-to-face learning during a pandemic?.....	18
25. Is Access Copyright's Read Aloud Canadian Books Program available to teachers in elementary and secondary schools?	19
26. Can a teacher read a story to students in the evening on Facebook Live, or a similar online platform, to promote literacy? ..	19
27. Can a live book reading by a teacher be communicated online?...	21
28. Can teachers record themselves reading books aloud to their students?.....	22
29. Can teachers transmit a recording of the book reading to their students via a password-protected website?	22

30. Can teachers record themselves reading a portion of a book and share the video on a password-protected platform such as Google Classroom or Moodle?..... 23

31. Can teachers include modern-day music in a video that teachers are preparing for their students? 24

32. Can a group of students (class or choir) meet online (via Google Meet) to practise and perform a published piece using a screen recording? 25

33. Can a school create a “virtual choir” of a published work that has been purchased (the appropriate number of copies – one per person) by the school, and post it online for public viewing? 26

34. Can teachers post online chapters of textbooks that have been purchased for all the students, but which may not be accessible to them because the books are in a closed school? 26

35. Can materials on websites such as photographs, activities, and images be copied and pasted to create activities for students? An example is building an activity library..... 27

36. Where can I get more information on copyright? 28

Index..... 30

© Introduction

The publication of this 5th Edition of *Copyright Matters!* takes into account key changes that have occurred in the area of copyright since the 4th Edition was published in 2016. Questions 24 to 36 are new to *Copyright Matters!* These new questions are *Frequently Asked Questions* asked by educators about online learning since the beginning of the COVID-19 pandemic in 2020.

Copyright law continues to evolve in response to existing and emerging technologies, international agreements, and the need for reasonable balance between users and creators of copyright-protected works.

We hope that teachers will continue to find *Copyright Matters!* a valuable tool in acquainting themselves with basic copyright rules. This booklet is a starting point for increasing the awareness of your rights and obligations, as a teacher, in selecting and using copyright-protected materials at your educational institution.

The authors have sought to simplify a very complex subject. The booklet is not a substitute for legal advice, which should be sought in cases where the application of general principles is unclear.

Important note: There is a difference between U.S. and Canadian copyright laws.

American and Canadian copyright laws are not the same. Ideas found on U.S. websites may not apply in Canada.

1. What is the purpose of this booklet?



This booklet gives teachers user-friendly information on copyright law, covering items from the Canadian *Copyright Act* and its regulations, contractual and tariff arrangements with copyright collectives, and court decisions. The 5th edition of this booklet is available online. The online version is updated to provide information about copyright law and copyright collectives, and how they relate to the use of resources on and off school premises. More detailed information is available from many printed sources, from the internet, and from your ministry or department of education. A list of sources appears at the end of this booklet.

Education departments and ministries—as well as school boards across the country—encourage awareness of, and respect for, copyright in our education systems.

2. Why is copyright important?



Just as you would want to protect anything that you own, creators want to protect their works. As students, we were all taught the value of original thinking and the importance of not plagiarizing the works of others. Since teachers use copyright-protected materials as well as educate the copyright owners and users of tomorrow, they have a unique responsibility to set the right example. The works of others should not be used without their permission unless the use is permitted by the *Copyright Act*. Teachers must be cognizant of the copyright status of resource materials in their possession.

3. What is fair dealing?



The *Copyright Act* provides that it is not an infringement of copyright to deal with a work for the purposes of research, private study, criticism, review, news reporting, education, satire, and parody, provided the dealing is “fair.”

The following guidelines describe the activities that are permitted under fair dealing in non-profit K–12 schools, and provide reasonable safeguards for the owners of copyright-protected works in accordance with the *Copyright Act* and decisions of the Supreme Court of Canada.

FAIR DEALING GUIDELINES

1. Teachers, instructors, professors, and staff members in non-profit educational institutions may communicate and reproduce, in paper or electronic form, short excerpts from a copyright-protected work for the purposes of research, private study, criticism, review, news reporting, education, satire, and parody.
2. Copying or communicating short excerpts from a copyright-protected work under these *Fair Dealing Guidelines* for the purpose of news reporting, criticism, or review should mention the source and, if given in the source, the name of the author or creator of the work.
3. A single copy of a short excerpt from a copyright-protected work may be provided or communicated to each student enrolled in a class or course:
 - a. as a class handout;
 - b. as a posting to a learning or course-management system that is password protected or otherwise restricted to students of a school or postsecondary educational institution; or
 - c. as part of a course pack.

4. A short excerpt means:
 - a. up to 10 percent of a copyright-protected work (including a literary work, musical score, sound recording, and an audiovisual work);
 - b. one chapter from a book;
 - c. a single article from a periodical;
 - d. an entire artistic work (including a painting, print, photograph, diagram, drawing, map, chart, and plan) from a copyright-protected work containing other artistic works;
 - e. an entire newspaper article or page;
 - f. an entire single poem or musical score from a copyright-protected work containing other poems or musical scores; or
 - g. an entire entry from an encyclopedia, annotated bibliography, dictionary, or similar reference work.
5. Copying or communicating multiple short excerpts from the same copyright-protected work with the intention of copying or communicating substantially the entire work is prohibited.
6. Copying or communicating that exceeds the limits in these *Fair Dealing Guidelines* may be referred to a supervisor or other person designated by the educational institution for evaluation. An evaluation of whether the proposed copying or communication is permitted under fair dealing will be made based on all relevant circumstances.
7. Any fee charged by the educational institution for communicating or copying a short excerpt from a copyright-protected work must be intended to cover only the costs of the institution, including overhead costs.

4. Does fair dealing permit the making of a digital copy from a print source?

©

Yes, as long as the copying is within the rules set out in the *Fair Dealing Guidelines*.

5. Can teachers copy or post an entire musical score or does the 10 percent limit in the *Fair Dealing Guidelines* apply?

©

Musical scores are usually sold individually—that is, one musical work at a time. The 10 percent limit applies, and a teacher may copy 10 percent of a musical score under fair dealing.

Music is also contained in music books. An example is a music book containing several musical works. For such a music book, one may copy 10 percent or one musical work in the book because it contains other musical scores. See 4(f) of the *Fair Dealing Guidelines*.

6. Can a teacher copy for instruction?

©

A teacher can copy (or take any other necessary action) to display a work protected by copyright. This permits the use of whiteboards and similar tools, and overhead projection using a device such as an LCD screen, overhead, opaque, or slide projector, provided the work is used for the purpose of education and training and is not already commercially available in a medium that is appropriate for this purpose.

7. Can a teacher copy materials intended for one-time use?



No. Copying, scanning, or printing materials intended for one-time use is strictly prohibited.

“Materials intended for one-time use” are workbooks and exercise books into which a student records answers. These are materials created and intended for each student to have his or her own copy. Once a student completes the answers, these materials are of no use to another student.

Any copying from materials intended for one-time use exposes the person making the copy, the teacher, the school, and the school board to liability for copyright infringement.

This prohibition does not apply to reproducibles. A reproducible is not intended for one-time use, but is sold or provided with the rights holder’s authorization to reproduce it for educational use.

8. Can a teacher copy for tests and examinations?



Yes. Teachers in Canada may copy, translate, communicate electronically, show, or play any copyright-protected work for a test or examination, provided the work is not already commercially available in an appropriate medium for the purpose of a test or examination.

9. Can teachers and students use statutes, regulations, and court decisions?



Teachers and students can copy and communicate the text of federal, provincial, and territorial statutes, regulations, and judicial decisions for educational purposes from every province and territory, with the following exceptions:

In Nunavut, statutes and regulations may be copied, but judicial decisions are accessible through membership sites that require a paid subscription.

In Quebec, statutes and regulations may be copied, printed, and used for personal and non-commercial use without charge and without further authorization. Any other reproduction may be subject to written authorization by Publications du Québec. Quebec has a licence system in place for the reproduction of court decisions.

Manitoba has an open licence to use the information on the government's website, giving users the ability to use most government information for most purposes. Thus, most material covered by Manitoba Crown copyright can be copied, modified, published, translated, adapted, distributed, or otherwise used, without seeking additional permissions from the government. Judicial decisions and legislation on the CanLII website can also be copied, printed, and used, free of charge without any other authorization, provided that CanLII is identified as the source of the document.

10. What rights do students with perceptual disabilities have?

©

- Students with perceptual disabilities, including blind and visually impaired students, as well as students with learning disabilities and other physical disabilities, are provided with alternative formats through production centres scattered across Canada. The alternative formats may include audiobooks, Braille, and e-text.
- Students, and educational institutions on behalf of students, may make a copy in an alternative format of a literary, dramatic, musical, or artistic work (but not an audiovisual work) in a format designed for a person with a perceptual disability.
- Translation, adaptation, and performance in public for the purpose of serving students with perceptual disabilities—as long as the work is not already commercially available in that format—are permitted.

11. What rights do school libraries have?

©

School libraries can:

- make a copy for the purpose of cataloguing, internal record keeping, insurance, or police investigation;
- make a copy for the purpose of restoration; and
- use digital technology to deliver an interlibrary loan copy of a copyright-protected work.

Provided a replacement copy is not commercially available in a medium and of a quality that is appropriate for these purposes, school libraries can also:

- make a copy of a work “if the original is rare or unpublished and is deteriorating, damaged, or lost”;
- make a copy of a fragile document or recording for on-site consultation if the original cannot be viewed, handled, or listened to because of its condition; and
- make a copy if the original is in an obsolete format or is in danger of becoming obsolete, or if the technology to use the original is unavailable or is in danger of becoming obsolete.

12. Can teachers play a sound recording or turn on a radio for students to listen to, or turn on a television for students to watch?



Yes. You can play sound recordings and turn on televisions and radios in the classroom, subject to all of the following conditions:

- it must take place on the premises of an educational institution;
- it must be for educational or training purposes;
- it must not be for profit;
- it must take place before an audience consisting primarily of students of the educational institution, persons acting under its authority, or any person who is directly responsible for setting a curriculum for the educational institution; and
- it must not involve a “motive of gain.”

This users’ right does not apply to recorded radio and television programs, but only to playing radio and television programs while they are being transmitted (by over-the-air broadcast, cable, satellite, or over the internet).

Where music is performed for a non-educational objective, SOCAN and Re:Sound tariffs apply. Examples that require royalty payments include music performed for extracurricular activities, such as an assembly, background music, a school dance, or a fashion show. Current statements of applicable fees can be found on the SOCAN website at www.socan.ca and on the Re:Sound website at www.resound.ca.

13. Can students perform a work protected by copyright, such as a play, on school premises?



Yes. An example is the performance of a play in a drama class. The same five conditions as those cited for playing sound recordings, listening to the radio, or watching television listed in the answer to the previous question must be met before this users' right applies.

14. Can music be performed without the copyright owner's permission?



The *Copyright Act* permits educational institutions to perform music, whether recorded or live, without payment or permission from the owner of the copyright. A person acting under the authority of a non-profit educational institution can:

- perform a musical work live if the performance is primarily by students of the educational institution;
- play sound recordings containing a musical work; and
- play radio and television programs containing a musical work while the program is being transmitted (by over-the-air broadcast, cable, satellite, or over the internet).

The following conditions apply. The performance must:

- take place on the premises of an educational institution;
- be for educational or training purposes;
- not be for profit; and
- take place before an audience consisting primarily of students of the educational institution, persons acting under its authority, or any person who is directly responsible for setting a curriculum for the educational institution.

The *Copyright Act* permits the public performance of music in schools when it is “in furtherance of an educational object.” Performances that are not in furtherance of an educational object must be authorized by the copyright owner, or by a collective that represents the owner.

The following uses of live and recorded music are permitted by the *Copyright Act* and therefore **do not require** permission and payment:

- in school assemblies (e.g., a recording of “O Canada”);
- by a student in a presentation to other students, teachers, assessors, or parents (e.g., as part of a presentation during music class);
- in demonstration activities by students, primarily for other students, teachers, assessors, or parents, and for which any admission fee charged covers costs but does not make a profit (e.g., a concert by the school choir, gymnastic routines, shows by school bands);
- during school hours for teaching/learning (e.g., music/dance/dramatic arts classes); and
- before and after school, and during recess, if the use is for educational purposes (e.g., school radio operated by students for credit and supervised by a teacher).

The following uses of live and recorded music are not permitted by the *Copyright Act* and therefore **require** permission and payment:

- at school dances;
- at school sporting events;
- while people are on hold when they telephone the school;
- at an event where the admission fee is intended to make a profit; and
- on school premises for no other reason than as background music (e.g., in the classroom, cafeteria, halls, over the PA system, at school events such as fairs, carnivals, or sociocultural events).

SOCAN and Re:Sound can provide licences to schools and school boards across Canada. Applicable rates can be found on the SOCAN website at www.socan.ca and on the Re:Sound website at www.resound.ca.

The following uses of live and recorded music are not permitted by the *Copyright Act*, and SOCAN and Re:Sound cannot provide licences to schools and school boards for music used:

- in a play performed live (e.g., a drama class's production of *My Fair Lady*). In this case, the educational institution must obtain copyright authorization from a theatrical agent;
- in performances on school premises by outside performers (e.g., invited singers, magicians, etc.). In this case, obtaining copyright authorization is the responsibility of the outside performers; and
- in activities held in school facilities that are rented or are provided free of charge to outside groups. In this case, obtaining copyright authorization is the responsibility of the outside group.

The factors to consider when determining whether music use requires permission include:

- Did the music use occur during school hours?
- Will the student be graded on the activity involving the music use?

- Does the music use involve a demonstration by a student or teacher for other students, teachers, assessors, or parents?
- Is it reasonable to consider the music use to be for educational purposes? The phrase “educational purposes” is not defined in the *Copyright Act*, but can be described as an activity that is planned, and where the objective is for students to meet one or more subject or program outcome.
- Was the music used on school premises?
- If admission was controlled, was it free?
- Was the music use for a non-profit purpose?

If the answer to the majority of these questions is “yes,” then the performance of the music is most likely permitted by the *Copyright Act*.

15. Can students and teachers use copyright-protected works to create new works?



The *Copyright Act* contains a users’ right permitting anyone—not just students and teachers—to use copyright-protected works to create new works. This users’ right is referred to in the *Copyright Act* as “non-commercial user-generated content.” This users’ right can be found in section 29.21 of the *Copyright Act* as amended by the *Copyright Modernization Act*. The following conditions apply to the creation of non-commercial user-generated content:

1. It can be used for only non-commercial purposes.
2. The original source must be mentioned, if it is reasonable to do so.
3. The original work used to generate the content must have been acquired legally.
4. The resulting user-generated content does not have a “substantial adverse effect” on the market for the original work.

This users' right permits students to use copyright-protected works to create videos, DVDs, or mash-ups, as long as all four conditions above are met.

The users' right permits user-generated content created under provision of the *Copyright Act* to be disseminated. Dissemination includes uses such as posting a video to YouTube or a website.

16. Can teachers copy programs from radio or television?



Yes. An educational institution or a person acting under its authority may make a single copy of a radio or television program, and show that copy, provided the following four conditions are met:

1. The copy must be made at the time the program is aired by the broadcaster or communicated over the internet.
2. The showing of the single copy must be for an audience consisting primarily of students.
3. The showing of the single copy must be for educational or training purposes.
4. The showing of the single copy must take place on the premises of the educational institution.

17. Can teachers show an audiovisual work (such as a DVD or video) on school premises without infringing copyright?



The *Copyright Act* permits showing an audiovisual work such as a DVD or video on the premises of an educational institution provided the following five conditions are met:

1. The showing must take place on the premises of an educational institution.
2. The showing must be for an audience consisting primarily of students, instructors, or persons directly responsible for setting a curriculum.
3. The showing must be for educational or training purposes.
4. The showing must not be for profit.
5. The copy shown must not be infringing or the person responsible for the performance has no reasonable grounds to believe that it is an infringing copy.

If all five conditions listed above are met, an audiovisual work may be shown for educational purposes without permission from the copyright owner and without the payment of royalties pursuant to section 29.5(d) of the *Copyright Act*.

Teachers can show audiovisual works purchased or rented from a retail store, a copy borrowed from the library, a copy borrowed from a friend, or a YouTube video.

Showing audiovisual works for non-educational purposes, such as fundraising or a family movie night, requires permission and the payment of copyright royalties.

Showing movies from subscription services in the classroom is governed by the terms of the agreement between the subscriber and

the subscription service. If the agreement provides that use is limited to “personal” or “household” use, for example, then classroom use is not permitted.

18. Can teachers copy an audiovisual work at home and show it in the classroom?

©

No. Teachers cannot copy an audiovisual work at home and then show it in the classroom. Teachers can, however, show a legally obtained copy in the classroom. A legally obtained copy includes a copy purchased or rented from a retail store, a copy borrowed from the library, a copy borrowed from a friend, or a YouTube video.

19. Can lessons be streamed live to students, or recorded and made available online for students at a time of their choosing?

©

Yes. Educational institutions can transmit lessons to students in real time over the internet or make a recording of a lesson available online. For example, a student in one school is able to access an online course containing copyright-protected material offered in a different school. The student is permitted to make a copy of the lesson and keep the copy until 30 days after the final evaluation (final report card) is received. Both the student and the educational institution are required to destroy any recording of copyright-protected material contained in an online lesson within 30 days after the students who are enrolled in the course receive their final evaluations.

20. Can teachers copy computer software for educational use?



Owners of legal copies of computer programs may make a single reproduction of these programs in only two situations:

1. An owner of a legitimate copy of a computer program may make one backup copy of that program. The person must be able to prove that the backup copy is erased as soon as he or she ceases to be the owner of the copy of the computer program from which the backup was made.
2. An owner of a legitimate copy of a computer program may also make a single copy of that program by adapting, modifying, or converting the computer program or translating it into another computer language, provided that:
 - (i) the reproduction is essential for the compatibility of the program with a particular computer;
 - (ii) the reproduction is solely for the person's own use; and
 - (iii) the copy is erased when the person ceases to be the owner of the copy of the program from which the copy was made.

21. Can teachers and students copy from the internet?



Yes. Educational institutions, teachers, and students may save, download, and share publicly available internet materials, as well as use that material in the classroom and communicate it to students or others within their education circle.

“Publicly available” materials are those posted online by content creators and copyright owners without any technological protection measures,

such as a password, encryption system, or similar technology intended to limit access or distribution, and without a clearly visible notice prohibiting educational use.

Routine classroom uses may be made of publicly available internet materials, such as incorporating online text or images into homework assignments, performing music or plays online for peers, exchanging materials with teachers or peers, or reposting a work on a restricted-access course website.

To encourage copyright awareness and respect in all circumstances, students and educators are required to cite the source of the internet materials they use.

22. Can teachers and students break digital locks to use copyright-protected materials they have the legal right to use?



No. A digital lock is a technological protection measure (such as encryption or a password) that restricts the ability of users of digital content from sharing or copying the content. The *Copyright Act* prohibits breaking a digital lock even for educational uses that are otherwise permitted by the *Copyright Act*. For example, the encryption on most commercial DVDs, or the serial-key validation required by many software programs, protects these DVDs and software programs from unauthorized use. These protections cannot be broken, even if the purpose of the use is otherwise allowed.

23. Are student-created works protected by copyright?



Yes. Any original work created by a student—whether in the form of an essay, a video or DVD, a sound recording, website, or art work—is protected. The student—or if the student is a minor, the student’s parent or legal guardian—must authorize the further use of a student’s work, such as its use in a school publication, a teaching workshop, a student exemplar, or a web posting.

24. Do copyright laws and the *Fair Dealing Guidelines* apply to online teaching and face-to-face learning during a pandemic?



Yes. There are no provisions in the *Copyright Act* and no judicial decisions altering the law on fair dealing in Canada in the circumstances of a pandemic. See below for the link to the *Fair Dealing Guidelines*. Note that Guideline 5, prohibiting cumulative copying, applies. Teachers cannot copy different short excerpts, each less than 10%, from the same copyright-protected work because that would amount to copying more than 10% of the work in total. Guideline 5 states: “Copying or communicating multiple short excerpts from the same copyright-protected work, with the intention of copying or communicating substantially the entire work, is prohibited.”

A link to the *Fair Dealing Guidelines* in PDF format:

https://cmec.ca/docs/copyright/CMEC_POSTER_FDG_EN.pdf

25. Is Access Copyright's Read Aloud Canadian Books Program available to teachers in elementary and secondary schools?

©

No. As of June 30, 2020, the Read Aloud Canadian Books Program is only available to schools that are licensed by Access Copyright. The program waives the copyright fee for teachers **ONLY** if their school or school board has a license from Access Copyright. At the time of this booklet's publication, all elementary and secondary public schools in all Canadian provinces and territories (except Quebec, where schools are licensed through Copibec) are unlicensed. Therefore, this program is **NOT AVAILABLE** to any provincial or territorial elementary or secondary schools. Copyright permission from a book's publisher must be obtained to make a video recording of a reading of all or part of a book for students who are learning at home.

The website describing Access Copyright's Read Aloud Canadian Books Program can be found at:

<https://www.accesscopyright.ca/read-aloud/list-of-read-aloud-canadian-books-publishers-authors/>

26. Can a teacher read a story to students in the evening on Facebook Live, or a similar online platform, to promote literacy?

©

No. There is no provision in the *Copyright Act* that would allow for this activity without permission from the copyright owner. The users' right in section 29.5 of the *Copyright Act* is not available in this situation because three of the five conditions for this users' right to apply are likely not met. The five conditions in section 29.5 are set out below:

1. The performance must take place on the premises of an educational institution. (In this context, the reading in an online classroom is arguably not taking place on the premises of an

educational institution because it takes place outside of school hours, and because it is for the purpose of promoting literacy rather than classroom instruction.)

2. It must be for educational or training purposes. (Although it can be argued that literacy is a core element of education, in this question the stated purpose is to promote literacy rather than education specifically.)
3. It must not be for profit. (This condition is most likely met in the circumstances of this question.)
4. It must take place before an audience consisting primarily of students of the educational institution, persons acting under its authority, or any person who is directly responsible for setting a curriculum for the educational institution. (In this question, the reading may not be limited to the students in the teacher's class. If the reading could be set up so that only the students in the teacher's class could view the reading, then this condition might be met.)
5. It must not involve a "motive of gain." Any fee charged for the performance must recover no more than the costs, including overhead costs, associated with the performance. (This condition is most likely met in the circumstances of this question.)

There may be a viable alternative. If a teacher does not have copyright permission for the reading, it may be worth searching on YouTube for audio or video recordings of a book. Many children's books (particularly for younger children) are freely available on YouTube channels that appear to be legitimate and seem to have appropriate permission. Teachers can link to these videos, or embed them in a password-protected learning management system post limited to the students in the teacher's class.

Below is a link to an example of a YouTube channel hosting online stories read aloud that appears to be legitimate:

<https://www.youtube.com/user/StorylineOnline/videos>

Teachers will have to use their best judgement in determining whether a work is posted on the internet with the permission of the copyright owner. Some factors to consider are the name of the account posting the material; the size and popularity of the channel; the commercial market for the work; the YouTube “verified channel” checkmark; and whether the uploader has given appropriate credit to the author(s) and publisher.

27. Can a live book reading by a teacher be communicated online?



Yes. Teachers can read books aloud to students in the educational context of a class. Section 29.5(a) of the *Copyright Act* permits the live, public performance of a copyright-protected work. Five conditions must be met for section 29.5 to apply:

1. The performance must take place on the premises of an educational institution. (A reading in an online classroom for the purpose of classroom instruction arguably takes place on the premises of an educational institution.)
2. It must be for educational or training purposes. (This condition is most likely met in the circumstances of this question.)
3. It must not be for profit. (This condition is most likely met in the circumstances of this question.)
4. It must take place before an audience consisting primarily of students of the educational institution, persons acting under its authority, or any person who is directly responsible for setting a curriculum for the educational institution. (“Primarily” does not mean “exclusively.” A liberal interpretation of section 29.5 would likely include performances by teachers for their students. The Supreme Court of Canada directed that users’ rights, including this one, be given a liberal interpretation.)
5. It must not involve a “motive of gain.” Any fee charged for the performance must recover no more than the costs, including

overhead costs, associated with the performance. (This condition is most likely met in the circumstances of this question.)

28. Can teachers record themselves reading books aloud to their students?

©

No. Recording a book reading requires permission from the copyright owner. Copyright owners have the exclusive right to reproduce their copyright-protected literary works. Recording a book reading is a reproduction of the book. There is no users' right in the *Copyright Act* authorizing this educational use.

29. Can teachers transmit a recording of the book reading to their students via a password-protected website?

©

Only if the recording of the book reading was authorized by the copyright owner. Section 30.01 of the *Copyright Act* permits the communication of a lesson to students, but only if the contents of the lesson are non-infringing. In this question, making the recording would be an infringing act and the recording would be an infringing copy because permission has not been obtained. Because the lesson contains infringing content (the unauthorized recording of the book reading), the users' right in section 30.01 does not apply. A recording of a book reading made without the permission of the copyright owner cannot be transmitted to students under the users' right in section 30.01 of the *Copyright Act*.

A Suggestion

If copyright permission cannot be obtained, it may be worth searching on YouTube for audio or video recordings of a book. Many children's books (particularly for younger children) are freely available on YouTube

channels that appear to be legitimate and seem to have appropriate permission. Teachers can link to these videos or embed them in a learning management system post.

Below is a link to an example of a YouTube channel hosting online stories read aloud that appears to be legitimate:

<https://www.youtube.com/user/StorylineOnline/videos>

Teachers will have to use their best judgement in determining whether a work is posted on the internet with the permission of the copyright owner. Some factors to consider are: the name of the account posting the material; the size and popularity of the channel; the commercial market for the work; the YouTube “verified channel” checkmark; and whether the uploader has given appropriate credit to the author(s) and publisher.

30. Can teachers record themselves reading a portion of a book and share the video on a password-protected platform such as Google Classroom or Moodle?



Yes, provided the *Fair Dealing Guidelines* are followed. The following three Guidelines should be particularly noted:

1. The portion of the book being read and recorded for communication to students must be within the copying limits set out in section 3 of the *Fair Dealing Guidelines*.
2. In accordance with section 3(b) of the *Fair Dealing Guidelines*, the recording must be communicated on a password-protected website or a learning or course management system that is password-protected or restricted to students of the school.
3. The teacher must not read and record multiple portions from the same book, which is prohibited by section 5 of the *Fair Dealing Guidelines*.

Below is a link to the *Fair Dealing Guidelines* in PDF format:

https://cmec.ca/docs/copyright/CMEC_POSTER_FDG_EN.pdf

31. Can teachers include modern-day music in a video that teachers are preparing for their students?



Yes. Everyone—instructors and students included—has a right under the *Copyright Act* to use and copy a copyright-protected work, or multiple works, in the creation of a new work. This right allows, for example, the use of copyright-protected music to accompany an original video. It also allows anyone to compile multiple videos in a creative fashion to create a new video. This right further allows a person to disseminate the work. Dissemination is a broad term and would include, for example, posting the user-generated content on the internet. This right is sometimes called the “mash-up” provision or “YouTube” right. These terms are derived from the source of the content and how the content is used under this users’ right. A popular source of content is YouTube. Many popular television shows, movies, and musical compositions are posted on YouTube with copyright permission. A popular use of this content is mashing it up to create a new television show, video, or song. This right allows YouTube users to make videos containing clips from television shows, movies, and popular music found legally on YouTube. The scope of the right, however, is not limited to content found on YouTube.

The following four conditions apply to this right:

1. The new work must be made for non-commercial purposes only. (This condition is most likely met in the circumstances of this question.)
2. The source of any copyright-protected work(s) used must be cited where reasonable, and, if available, the name of the author or performer.

3. Any copyright-protected work used in the creation of a new work must not be from an infringing source, or the user must have no reason to believe it is from an infringing source. (Teachers will have to use their best judgement in determining whether a work is posted on the internet with the permission of the copyright owner. Some factors to consider are the name of the account posting the material; the size and popularity of the channel; the commercial market for the work; the YouTube “verified channel” checkmark; and whether the uploader has given appropriate credit to the author(s) and publisher.)
4. The new work must not have a “substantial adverse effect” on the market for the copyright-protected work(s) used. The new work should not be useful as a substitute for someone who might otherwise have purchased the copyright-protected work(s) used. (This condition is most likely met in the circumstances of this question.)

32. Can a group of students (class or choir) meet online (via Google Meet) to practise and perform a published piece using a screen recording?



No. There are no users’ rights in the *Copyright Act* that permit educators or students to make recordings of copyright-protected works (including musical works) or to communicate those recordings for public viewing online. Permission of the copyright owner is required to make a recording of a copyright-protected work.

33. Can a school create a “virtual choir” of a published work that has been purchased (the appropriate number of copies – one per person) by the school, and post it online for public viewing?

©

No. There are no users’ rights in the *Copyright Act* that permit educators or students to make recordings of copyright-protected works (including musical works) or to communicate those recordings for public viewing online. Permission of the copyright owner is required to make a recording of a copyright-protected work. Since a musical work is a copyright-protected work, recording it requires permission from the copyright owner.

34. Can teachers post online chapters of textbooks that have been purchased for all the students, but which may not be accessible to them because the books are in a closed school?

©

A teacher can post one chapter under the *Fair Dealing Guidelines* (but note, as a reminder, that a teacher cannot post a new chapter every week). A single copy of the chapter may be provided or communicated to each student enrolled in a class or course by posting the chapter to a learning or course management system that is password-protected or otherwise restricted to the students in the class. Owning a physical copy of a book does not give the owner the right to make a copy of any more of the book than is permitted under fair dealing.

35. Can materials on websites such as photographs, activities, and images be copied and pasted to create activities for students? An example is building an activity library.



Educators have the right to copy, communicate, and perform material that is available to the general public on the internet for their students. This users' right in section 30.04 of the *Copyright Act* would allow an educator, for instance, to build an activity library for students, using pictures, diagrams, photographs, text, and other materials from a website that is publicly available.

There are **five conditions** to meet in order to rely on this educational users' right:

1. The use must be for educational purposes.
2. Any content used must not be protected by a password, paywall, or any technological measures that restrict access to the work or the internet site. (Having to register to use a website is not a technological measure that restricts access to the work.)
3. There must not be a clearly visible notice specifically prohibiting educational use. (A general statement such as "all rights reserved," or a copyright symbol, does not by itself prohibit educational use under this right.)
4. The material being used should either be posted legally, or the educator should have no reason to believe the material was posted illegally. A copy is posted illegally if it is posted without the copyright owner's permission. (It can sometimes be difficult to tell whether internet material on a website has been posted illegally. Educators will have to use their best judgement in determining whether a work is posted on the internet with the permission of the copyright owner. Some factors to consider are the name of the account posting the material; the size and popularity of

the channel; the commercial market for the work; in the case of YouTube, whether there is a “verified channel” checkmark; and whether the uploader has given appropriate credit to the author(s) and publisher.)

5. The source, and the name of the author, performer, maker, or broadcaster (if given in the source) must be cited.

36. Where can I get more information on copyright?



Copyright can be, and often is, very complicated. This booklet provides the basics to point you in the right direction toward increasing your own copyright awareness. Exploring additional resources to obtain more in-depth information on the topics that are covered in this booklet will increase your knowledge. **Awareness of copyright is important because you are educating the copyright owners and users of tomorrow. More detailed information is available from the following sources:**

WEBSITES

A website by the Copyright Consortium of the Council of Ministers of Education, Canada (CMEC), that helps teachers assess when they can use copyright-protected materials without getting copyright permission under the fair dealing provision of the *Copyright Act*:

www.fairdealingdecisiontool.ca

The Council of Ministers of Education, Canada (CMEC) site contains an electronic version of *Copyright Matters!* and information about CMEC’s copyright activities:

www.cmec.ca/copyrightinfo

The Canadian School Boards Association:

www.cdnsba.org/resources/canadian-copyright-reform

The Canadian Teachers' Federation:
www.ctf-fce.ca/categories/copyright/

Canada's *Copyright Act*:
www.laws-lois.justice.gc.ca/eng/acts/C-42/index.html

Canadian Intellectual Property Office. A guide to copyright basics:
www.ic.gc.ca/eic/site/cipointernet-internetopic.nsf/eng/Home

Index

A

- Activity library
 - Using material from the internet to create 27
- Alternative format materials 7
- Audiobooks
 - Copying 7
- Audiovisual work (such as DVD or video)
 - Copy at home to show in school 15
 - Copy in alternative format 7
 - Purchased or rented copies 14
 - Short excerpt 3
 - Showing for non-educational purposes 14
 - Show on school premises 13, 14, 15

B

- Backup copy
 - Library book 7
 - Software 16
- Bibliography
 - Short excerpt 3

C

- Citing sources 16–17, 24, 27–28
- Class handouts 2
- Commercially available
 - Alternative format materials 7
 - Replacement copies of library materials 7
 - Test and examinations 5
- Copyright Act
 - Link to 29
- Copyright information
 - Websites 28–29

- Course/learning management system
 - Communicating recordings in 23
 - Posting book chapter in 26
 - Single copy of short excerpt in 2
- Court decisions
 - Copy and communicate 6
- Cumulative copying, multiple short excerpts 3, 18, 23

D

- Dictionary
 - Short excerpt 3
- Digital copy
 - Making a digital copy from print source 4
- DVDs
 - Creating 12-13
 - Showing in the classroom 14

E

- Educational use
 - Breaking digital lock 17
 - Copying software 16
 - Of publicly available material from the internet 16, 27
 - Reproducibles 5
 - Teachers recording book reading 22
- Encyclopedia
 - Short excerpt 3
- Exercise books
 - Copying from 5

F

- Fair dealing
 - Fair Dealing Guidelines 2
 - What it is 2
- Format, obsolete
 - Copying original document 8

I

Infringement

- Copying one-time use material 5

Internet

- Communicating downloaded material 16

- Copying material from 16

- Downloading material from 16

- Protections via encryption, digital locks, and passwords 16–17, 27

- Reposting 16–17

- Saving material from 16

- Using photographs and images to create activities 27

- YouTube read aloud stories 20, 22

L

Learning/course management system

- Communicating recordings in 23

- Posting book chapter in 26

- Single copy of short excerpt in 2

Liability, copying one-time use material 5

Libraries in schools

- Copying for restoration 7–8

- Copying fragile books 7–8

- Copying rare books 7–8

- Rights of 7–8

M

Map

- Short excerpt 3

Mash-ups, creating 12–13, 24

Movies

- Showing in classroom 14

- Subscription service 14

Music

- After school hours 8

- At school dances 8–9, 10–11

- At sporting events 10–11

- Background music 8–9
- Copying a work from a book with other musical works 4
- Copy or post an entire score 4
- Creating alternative format 7
- For instructional purposes 9–10
- From television and radio 8, 9
- From the internet, using 17
- From YouTube, using 24
- In school assemblies 10
- Live performance 9
- Performances by outside performers 11
- Play recording in the classroom 8
- Posting music recordings online 26
- Recorded music, play in school 8
- Recording copyright-protected music using purchased material 26
- Royalty payments 9
- Short excerpt 3
- Use in a video 24
- Use in extracurricular activities 9
- Use of screen recordings of music for online practice, performance 25
- Using in a video for instruction 24
- Virtual choir 26
- When permission is required 10, 11
- Musical score
 - Entire, copy or post 4
 - In a book with other musical scores 4
 - Short excerpt 3

N

- Newspaper article
 - Short excerpt 3

O

- One-time use materials
 - Compared to reproduces 5
 - Copying materials intended for one-time use 5

Online lessons

- Posting chapters of textbooks 26
- Use of live reading by a teacher 19–21
- Use of screen recording for music practice 25
- Using copyright-protected material 15
- Using recordings of book readings 19, 22, 23, 26

P

Paintings and other still visuals, such as a map

- Short excerpt 3

Pandemic

- Copyright rules during 18

Perceptual disabilities

- Creating alternative format materials for students 7
- Students' rights to use alternative format materials 7

Permission to copy

- Fair dealing decision tool 28
- Fair Dealing Guidelines 2, 3, 4, 7, 18, 23, 24, 26
- When permission is needed 1, 7, 8, 11, 12, 14, 19, 20, 22, 23, 26, 27, 28

Photograph

- Copy from website 27
- Short excerpt 3
- Use of in activity library 27

Play

- Performance in drama class 9

Poem

- In a work containing other poems 3
- Short excerpt 3

Print material

- Digital copy from 4
- Judicial decisions 6
- Materials intended for one-time use 5
- Statutes 6

Prohibition, copying

- Material designed for one-time use 5

Projector (slide, opaque, overhead, LCD screen)

- Using to display copyright-protected work 4

R

Radio

- Copying and playing programs 13
- Playing programs containing musical work 9
- School radio 10
- Use in the classroom 8
- Use of recorded radio programs 8

Read aloud books and stories

- Available on YouTube 20, 23
- Live book reading 21
- Posting on Facebook Live 19
- Recording a teacher reading a book 23
- Teacher reading to an online class 21
- Use of recorded reading in online teaching 22
- Video recording 19

Recording

- A teacher reading a book 22
- A teacher reading a portion of a book 23
- Transmitting a recording of a teacher reading a portion of a book 23
- Transmitting a teacher recording on a protected website 22

Reference work

- Short excerpt 3

Reproducibles

- Copying from 5

Re:Sound 9, 11

Rights holder

- Authorization to copy reproducibles 5

S

Short excerpt

- Copying multiple 3
- Description 3
- In Fair Dealing Guidelines 2

SOCAN 9, 11

Software

- Adapting 16

- Backup copy 16
- Copying 16
- Translating 16
- Sound recording
 - Containing a musical work 9
 - Playing in the classroom 8
 - Short excerpt 3
 - Student created 18
- Statutes
 - Copy and communicate 6
- Student-created work 18

T

Television

- Conditions for viewing in classroom 8
- Copying programs 13
- Including clips from TV shows on YouTube in mashups 24
- Live programs 8
- Programs containing musical works 9
- Showing recorded programs 8
- TV programs on YouTube 24
- Use in classroom 8

Tests and examinations

- Copying for 5

Textbooks

- Posting chapters to learning/course management systems 26

Translation

- Copyright-protected work for tests and examinations 5

V

Videos

- Creating 12–13
- Embedding in learning or course management system 20, 23
- Recording of a book reading 22
- Showing in the classroom 14
- Use of music 24

W

Websites [28](#)

Whiteboard

Using to display copyright-protected work [4](#)

Workbooks

Copying from [5](#)

Y

YouTube videos

Posting [13](#)

Recorded readings of stories [20](#)

Use in classroom [14](#), [15](#), [20](#), [22](#), [23](#), [24](#)

Using content to make videos [24](#)

Verified channel [21](#), [23](#), [25](#), [28](#)

