

Questions re. the Prospective Copying of Images

1. Is the image copyrighted? In Canada,* copyright protection is automatic as soon as eligible content like images becomes fixed in some manner. For copyright protection to exist, images don't need to be accompanied by the copyright symbol ©, nor do they need to be registered with the Canadian Copyright Office. When copyright expires on images, those images enter the public domain.

- If the image is in the public domain, proceed with making a copy.
- If the image is not in the public domain, read #2 below.

2. Is the copyrighted image covered by a licence? When a copyright owner wishes to permit use of a work during the term when the work is protected, they can signal this intent, for example, by using a licence or an 'un-licence' (for unrestricted use, aka. 'open access') from <https://creativecommons.org/licenses/>.

- If the intended image use is permitted under Creative Commons, proceed with making a copy and follow the CC terms. If a licence to use the image is available otherwise, read #3 below.
- If the image is not licensed, read #3 below.

3. Do any exceptions from Canadian copyright law allow the image to be copied? All patrons should refer to sections 29.4 through 30.04 of the Copyright Act for the following exceptions of protected works: displaying works for instruction, tests or exams, performances, news and commentary, broadcasts, literary collections, and material available through the Internet. Libraries, archives, and museums should refer to sections 30.1 through 30.21 for the following exceptions: management and maintenance of [a] collection; fair dealing for patrons; and copying of archival copyright-protected materials.

- If an exception is relevant, proceed with making a copy, provided the patron is comfortable exercising their user's rights for content with a disclaimer precluding copying. If the patron's institution has a copyright policy, such as documenting the exception relied upon, the patron should abide accordingly.
- Otherwise, read #4 below.

4. Is the proposed dealing for the image fair? All patrons should refer to sections 29 of the Copyright Act. Libraries, archives, and museums should refer to section 30.2.

- If fair dealing is relevant, proceed with making a copy, provided the patron is comfortable exercising their user's rights for content with a disclaimer precluding copying. If the patron's institution has fair dealing guidelines, such as answering a series of questions like the impact of the copying on the market or documenting that fair dealing was relied upon, the patron should abide accordingly.
- Otherwise, read #5 below.

5. Who needs to be contacted for permission to copy the image?

- If the image is licensed, before making a copy, contact the licence provider.
- If the image is not licensed, before making a copy, contact the image creator.
- If the image has no locatable copyright owner (for example, if the image creator is deceased but the work hasn't expired into the public domain), before making a copy, obtain a licence from the Copyright Board of Canada, with details outlined at <https://cb-cda.gc.ca/en/unlocatable-owners/general-information>.

*The law that is relevant is the law where the copy is made. In Canada, that law is the Copyright Act (<https://laws-lois.justice.gc.ca/eng/acts/C-42/Index.html>). Keep this in mind if the patron makes a copy when outside of Canada, or if they make a copy for a new work in partnership with a colleague who is outside of Canada.

Resources

- Bain, P. E. (2016). *Copyright protection in Canada for artists*. Dickinson Wright. <https://www.dickinson-wright.com/news-alerts/copyright-protection-in-canada-for-artists>
- Copyrightlaws.com. (2020). *Orphan works in Canada: Unlocatable copyright owners* <https://www.copyrightlaws.com/orphan-works-in-canada-unlocatable-copyright-owners/>
- Cullihall, K. & Perry, B. (n.d.). *Demystifying copyright *Abridged for visual artists from: A guide to Canadian copyright basics for writers, performers, musicians and artists*, CARFAC Ontario. https://www.carfaontario.ca/Resources/Documents/Resources/demystifying_copyright.pdf
- Greene, D. (2021). *Image resources*. <https://libraryguides.mcgill.ca/images>
- Morrison, C. & Secker, J. *Copyright the card game* (n.d.; Canadian edition linked to page: 2018). *UK copyright literacy*. <https://copyrightliteracy.org/resources/copyright-the-card-game/>
- Samuelson-Glushko Canadian Internet Policy and Public Interest Clinic. (n.d.). *Copyright and privacy in photography*, https://cippic.ca/en/FAQ/Photography_Law
- Smith, K. L. (2020). Coaching copyright: Rules and strategies for the game. In Ellis, E. L., & Smith, K. L. *Coaching copyright*. (pp. 8-46). ALA Editions.
- Society of Graphic Designers of Canada. (2019). *GDC code of ethics*, GDC Foundation. <https://www.gdc.net/code-of-ethics>
- University of Alberta. (2020). *Canadian copyright term and public domain (PD) flowchart*, <https://www.ualberta.ca/faculty-and-staff/copyright/intro-to-copyright-law/licensed-royalty-free-content/can-pd-flowchart-2020mar06.pdf>
- University of Alberta. (2021). *Forms & templates*. <https://www.ualberta.ca/faculty-and-staff/copyright/resources/forms-and-templates.html>
- University of Alberta. (2019). *Images*. <https://sites.library.ualberta.ca/copyright/modules/images-2/>
- University of British Columbia. (n.d.). *Image citation guide*. <https://copyright.ubc.ca/Image-citation-guide/>
- University of British Columbia. (n.d.). *Image sources*. <https://copyright.ubc.ca/image-sources/>
- University of British Columbia. (n.d.). *Public domain*. <https://copyright.ubc.ca/public-domain/>
- University of Winnipeg. (2021). *#FairDealingWeek boot camp*. <https://uwinnipeg.libwizard.com/f/winnipeg-libwizard-com-fd-btcampintro>
- Wilkinson, M. A., Soltau, C., & Deluzio, T. GB. (2015). *Copyright in photographs in Canada since 2012*, <https://www.open-shelf.ca/wp-content/uploads/2015/12/Copyright-in-Photographs.pdf>