

## *Music in the classroom*

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Audio and sound materials in the classroom are important instruction tools. The following screencast will assist you in using audio and sound materials in the classroom within the limits of copyright legislation. We will cover (general rules about)

1. Copyright and the Web:
  - a) Fair Dealing
  - b) Educational Exceptions
  - c) Terms of Use = a licence
  - d) Digital Locks
2. UNB Libraries' licenced music e-resources
3. Copying print sheet music for the classroom
4. Performing music in the classroom
5. Non-educational uses of music and sound
6. Audio materials with fewer or no copyright restrictions
7. Mashups
8. D2L and audio materials
9. UNB Libraries' course reserves

The vast majority of content on the internet is copyright protected and must be used in accordance with the *Copyright Act* <http://laws-lois.justice.gc.ca/eng/acts/C-42/index.html> and licence terms.

There are two sets of provisions in the *Copyright Act* that facilitate the use of copyright-protected materials in the educational context: Fair Dealing, and Educational Exceptions.

Though UNB provides general rules to help instructors navigate some of the most common examples of copying for the classroom that fall within the accepted interpretation of fair dealing, all instructors are still individually responsible for following the provisions of the *Copyright Act*.

1a) The Fair Dealing exception in the *Copyright Act*, lately interpreted as a users' right, allows you to copy short excerpts of copyright-protected works for the purpose of research, private study, education, parody or satire, criticism or review, and news reporting.

In the context of Fair Dealing, a short excerpt means up to 10% of a copyright-protected work (including a literary work, musical score, sound recording, and an audiovisual work).

Under fair dealing, you can copy either up to 10% of a work (including a literary work, musical score, sound recording, and an audiovisual work) or no more than an entire single poem or musical score from a copyright-protected work containing other poems or musical scores, whichever is greater.

Fair Dealing also enables instructors to make short excerpts of copyrighted material available digitally for further distribution to the class, for example, as part of an online course using the D2L platform restricted by a password.

Depending on the outcome of fair dealing analysis, in some instances, it may be fair to copy more than 10% of a work, such as an entire image, an entire poem, or an entire musical score.

As instructors, you can apply fair dealing analysis to gauge the fairness of your copying by considering the following factors established by the Canadian courts:

#### Purpose

Is the copying done for research, private study, education, parody, satire, criticism, review, or news reporting? Is the use of the copy for profit or is it charitable? Research for commercial purposes may be less fair but it may still qualify for fair dealing.

#### Character

What is your intended use of the copy? If the use of the copy is clearly defined and is restricted in scope, it favours fair dealing. For example, single copies are considered more fair than multiple copies, and copies placed on e-reserve or D2L are considered more fair than unrestricted means of distribution.

#### Amount

What is the amount and importance of the portion copied in relation to the work as a whole? Limited and reasonable portions are considered more fair. It is important to note that in many circumstances, it is necessary to copy entire works, such as images, provided they satisfy the remaining Fair Dealing analysis factors. If the entire work is to be reproduced, it has to be clear that no less than the entire work is needed to achieve the stated purpose of use.

#### Alternatives

Are there other non-copyrighted works available, or works licenced for use by the UNB community, that would have served the same purpose? If there are no alternative works, the reproduction is more fair. Was the copy necessary to achieve the purpose of the copy?

#### Nature

Is the work published and widely available? If the work was created for and/or is being marketed for your stated purpose, the copying is less fair. If the work is not published, but its reproduction with acknowledgment could lead to a wider dissemination of the work, then it is more likely to be considered fair. Alternatively, if the document was not published and was originally not intended for distribution, such as a private letter or a personal journal, it is likely to be less fair.

#### Effect

Will the copy unduly affect the market value of the copyrighted work? If the work is out of print and/or there is no licence available, the copying is more fair. If your use of the work minimizes the potential for unauthorized use that could negatively affect its value, your use is more fair. If you take steps to ensure that your use of the work is limited to the stated purpose and to a limited audience, your use is more fair.

We encourage you to contact the UNB Libraries' Copyright Office for assistance with any aspect of Fair Dealing analysis. E-mail us at [copyright@unb.ca](mailto:copyright@unb.ca).

1b) Educational Exceptions in the *Copyright Act* cover a range of practices useful in the classroom. In particular, instructors can

- ✓ project a complete copyrighted item on a screen for in-class teaching without copyright permission, and
- ✓ copy and communicate of an entire copyrighted work from the web

(provided the original source is identified, a legal copy of the original is utilized, and no digital locks or any notices prohibiting the intended use of the work are contravened).

1c) Keep in mind that, in general, the licence terms of an electronic resource take precedence over the rights or copyright exceptions in the *Copyright Act*, such as Fair Dealing and Educational Exceptions.

The “terms of use,” “legal notices,” and “linking policies” associated with materials from the web constitute licence agreements that specify how the web material can be used.

The “terms of use” are typically found somewhere on the home page of a website. An author of a website may specify the conditions under which a user may hyperlink to the webpage and what portion of the material can be used for what purpose. As an example, check out <http://www.freemusicarchive.org> and take a look at their “terms of use.” The section entitled “License Provisions” outlines the different licence categories of their music files available for downloading and tells you to look for the links to licences attached to any given song.

1d) Some copyright holders use digital locks to restrict access to copyright-protected works and/or to limit the use that can be made of such works.

Examples of digital locks include, but are not limited to, encryption locks, digital watermarks, measures that limit printing, copying, and sharing of content, and continuous online authentication measures.

The *Copyright Act* prohibits the circumvention of digital locks to obtain access to copyright-protected works. The UNB Fair Dealing Policy does not permit the circumvention of digital locks to obtain access to copyright-protected works. In order to access content behind a digital lock it is necessary to obtain the permission of the copyright holder.

2. Chances are that most of the audio materials you will be using in your courses will be sourced from UNB Libraries. Take a look at the UNB Libraries’ Guide to Music <http://www.lib.unb.ca/guides/view/index.php/51> for a list of e-Resources for music and scores.

You can use these resources in their entirety, as opposed to short excerpts only. This is made possible by the terms of the licences that UNB Libraries sign with publishers and vendors of the electronic content. In this example of licence terms from one of our e-resources, Smithsonian Global Sound <http://search.alexanderstreet.com/terms-of-use>, the terms define who are the authorized users and spell out the restrictions on the use of its content.

3. You can copy and distribute sheet music in the classroom provided that it is a short excerpt – up to 10% of a musical score – that falls within the requirements of Fair Dealing. For copying that exceeds a short excerpt please contact the copyright office to clear rights with the copyright owner.

4. The Educational Exceptions in the *Copyright Act* make it possible for instructors to play or perform an entire piece of music or sound recording on the premises of an educational institution to an audience primarily made up of students.

Physical recordings and audio materials from the web performed in the classroom must be legally obtained copies, personal or otherwise, where no digital locks or any notices prohibiting the intended use of the work are contravened, no licences are contravened, and you have no reasonable grounds to believe that the film is an infringing copy.

5. For non-classroom uses of music and sound, such as social events and gatherings open to the public, or uses that exceed the parameter of fair dealing and educational exceptions, consult the licences available through

- The Society of Composers, Authors and Music Publishers of Canada <http://www.socan.ca/> and
- The Canadian Musical Reproductions Rights Agency <http://www.cmrra.ca/> or
- contact [copyright@unb.ca](mailto:copyright@unb.ca).

6. Effective and free alternatives to the above resources may be found in the public domain or may be utilized under a creative commons licence.

Public domain is the term used for materials that are no longer covered by copyright law. The *Canadian Copyright Act* limits the term of copyright to the life of the author or creator plus fifty years. After the term of copyright expires, the work becomes public domain. This means materials in the public domain may be reproduced in any form without the permission of the copyright owner.

Creative Commons <http://www.creativecommons.org> is a nonprofit organization that helps creators customize the terms of copyright in ways that facilitate the usage of copyrighted materials while protecting authors' rights.

Creative Commons offers six basic types of licences that authors can customize to enable varying degrees of sharing and modification of their works by the users.

Here are a few examples of creative commons and public domain music resources:

- IMSLP / Petrucci Music Library: <http://imslp.org/>
- Musopen: <https://musopen.org/>
- the Freesound Project: <http://www.freesound.org/>
- ccMixter: <http://ccmixter.org/>

7. The “mashup” exception to copyright in the *Copyright Act* allows instructors and students to create, for non-commercial uses, new works using copyrighted content (provided the original source is identified, a legal copy of the original is utilized, and no digital locks or any notices prohibiting the intended use of the work are contravened).

Here is an example of an audio mashup that accompanies an article by Brian Lamb in EDUCAUSE Review: “Dr. Mashup; or, Why Educators Should Learn to Stop Worrying and Love the Remix.”

- hear the mashup at <https://net.educause.edu/ir/library/multimedia/erm0740a.mp3>
- view the article at <https://net.educause.edu/ir/library/pdf/ERM0740.pdf>

8. Our next item to cover is Desire2Learn and Online Materials.

As this diagram from our copyright webpage demonstrates [www.lib.unb.ca/copyright/TeachingandD2L.php](http://www.lib.unb.ca/copyright/TeachingandD2L.php), Desire to Learn is best suited for uploading material to which you, as an instructor, own the copyright, material freely available on the web, material from UNB Libraries' licenced electronic resources, and material that exists in the public domain.

In accordance with the UNB Copyright Policy <http://media.lib.unb.ca/copyright/unbCopyrightPolicy2014.pdf>, you are responsible for ensuring that any copyrighted content you post on D2L meets the limits of fair dealing, respects the terms of digital licences, and is removed at the end of term.

9. Note that UNB Libraries provide a hassle-free Course Reserves system <http://www.lib.unb.ca/faculty/reserves.php> that delivers copyright-protected content to your students via the reserves tab on the library's home page and D2L.

The Advantages of Using the UNB Libraries' Course Reserves system are that

- Students can easily retrieve information from one place;
- Course Reserves are embedded in D2L;
- Library staff maintain the electronic reserves system and take care of any access issues; and
- Library staff look after all licensing and copyright aspects of your Course Reserves.

Feel free to contact the Copyright Office with any questions at [copyright@unb.ca](mailto:copyright@unb.ca) and be sure to check out our website at [www.lib.unb.ca/copyright/](http://www.lib.unb.ca/copyright/).