

## Moving course materials online

There has been a lot of concern over Intellectual Property (IP) rights in light of the new measures taken during Covid-19 shut downs. As a copyright librarian, steward, and divisional IP subcommittee member, I've been asked to give my insight and help answer questions that may arise.

As there is no common language across the college sector with regards to copyright ownership I will be relying on the language within Article 13.

Many members have heard rumors of or read within their college's IP policy that anything uploaded to the colleges' Learning Management System (LMS) becomes the property of the college.

This is not necessarily true.

I am unaware of any terms of service agreed to by LMS users (faculty) which would waive any rights in favour of the LMS provider/college. Therefore, we must rely on the wording of Article 13.01 and the *Copyright Act* which emphasises the employer owning the copyright in "work made in the course of employment".

In my interpretation of it (in the scope of copyright with regards to course materials) this means work in which the faculty was:

- assigned,
- directed to create,
- contracted to create,
- specifically funded by the college to develop

In other terms the instructors' SWF or contract specifically directs the creation of materials such as lecture notes, powerpoint slides, videos, etc.

AND/OR

- The material was developed with substantially more use of college resources than would normally be provided for the creator's

employment duties. Ie. This might occur as disproportionate use of staff time, networks, or equipment.

In all likelihood this threshold would only be met in limited circumstances as we know most faculty in the college system are working on their lectures/materials outside of business hours at home on their own computers.

As all faculty are currently working off campus using their own resources this threshold will be even harder for the employer to argue.

### **So what do we do with this information?**

If faculty have NOT been directed as part of their SWF or CONTRACT to CREATE the materials and did NOT use substantial college resources in the creation of those materials, than simply being SWFed, or, in the event that a SWF or contract is not altered, directed to put their lessons/materials on the LMS, would not transfer IP rights to the employer.

This, however, does not mean the employer will not / does not have the ability to copy and archive the materials.

In this instance we suggest that where the faculty does not include other's (copyrighted) work in their materials that they transfer those materials to a cloud-based platform. We are suggesting Google Drive or Microsoft OneDrive (personal accounts created for this purpose, not institutional OneDrive accounts).

Many faculty will likely find it easiest to record their lectures (via video or voice over). If faculty would like to record these lectures or post audio to their slides we suggest using a private channel like YouTube, Vimeo, or Zoom. As opposed to using the institutional streaming services (if even available). Faculty can then share links to these materials via the LMS. These links can then later be destroyed by the faculty thus making the faculty's IP inaccessible to the employer.

If the faculty has included other's (copyrighted) work in their materials as permitted under fair dealing exceptions, they can continue to use the LMS as

usual. These works fall under the *Copyright Act* section 30.01(6). This section requires that these "lessons" be destroyed 30 days after the students who are enrolled in the course receive their final evaluations. If the college keeps the materials/lessons archived and uses them in the future they are not only potentially infringing on the faculty's copyright, but absolutely infringing on the copyright of the creator whose work is included in the materials/lesson.

At present these abridged lessons are unlikely to be of any real value to the colleges, however, the larger concern is if / when faculty are SWFed or contracted to create online courses for coming semesters if/when we don't return to regularly scheduled face to face classes in the coming months.

The likelihood of faculty being contracted/re-SWFed to create online courses moving forward is a very real possibility. This would then place the majority of faculty within this "work made in the course of employment" category and shifting any rights to course materials/lessons to the employer.

The best course of action in the coming months would be to rely heavily on s. 30.01(6) of the *Copyright Act* as much as possible. Pepper lessons with fair dealing materials so that the employer will not be legally allowed to archive the materials for future use.

Please do not hesitate to forward me any questions or concerns you may have going forward.

*In Solidarity,*

*Heather Buffett, LL.B., MLIS  
OPSEU Local 556*

For further information with regards to copyright and shifting to online courses, the below FAQs are currently being delivered to post secondary institutions across Canada created by University Copyright Librarians.

College librarians will likely be asked to adapt this to fit within the college sector IF their libraries have not already produced their own FAQs.

We are all subject to the same legislation so apart from the “Ownership of online course materials” section this information will be the same across the post-secondary institutions.

Please note that all sections in red are meant to be edited to reflect the institution's specific policies/LMS/tools/contacts/ etc.

## **Serving Students Equitably As We Rapidly Shift to Online Course and Exam Delivery: Copyright and Access Considerations**

*In this resource, we offer two template versions of copyright guidance for instructors which libraries can adapt as they see fit, as well as commentary on what our specialists would like to see as an ideal access scenario for students.*

**Quick Copyright and Digital Delivery Tips** *(A shorter template for libraries to adapt for use by instructors, adapted from Ryerson University)*

### **Key points to remember:**

1. Most of the legal issues are the same whether the teaching is done in person or online.
2. If it was okay to do in class, it is often okay to do online – *especially* when your online access is limited to the same enrolled students.
3. You can continue to apply the **<fair dealing policy and/or guideline>**.

### **Additional advice:**

- Use your university password-protected **<LMS>** to make material available to your students, and use **<tools your institution provides or recommends>** to deliver lectures with copyrighted content.
- Post your in-class slides to **<LMS>**. Slides provided by textbook publishers can almost always be used, according to their Terms of Use.
- Course readings rules for print and online posting to **<LMS>** are similar. Either use the guideline of your **<fair dealing policy and/or guideline>**, link to a resource within your **< library collections>**, or link out to Internet content.

- [<Copyright checking service>](#) can help you copyright check readings, create links to ebooks and journal articles and more.
- Your Subject/Liaison Librarian [<link to subject/liaison Librarian list>](#) may be able to help you find alternative content, and the [<link to your library website or collection>](#) has a large collection of online journals and ebooks that can help support online learning. Your librarian can also help you find openly licensed teaching materials like Open Educational Resources (OER) [<link to your local OER guide>](#).
- Use phone apps like [Genius Scan](#) or [Adobe Scan](#) to easily scan to post print materials [<LMS>](#) within the limits allowed by the [<fair dealing policy and/or guidelines>](#). Make scanned PDF files more accessible for your students by using an [optical character recognition \(OCR\) online tool](#) to convert "non-selectable" text files into more accessible versions.
- Sharing audiovisual material like films and audio files is more complex. But remember you can still link to legally posted online content (from YouTube etc.). [<Your Library website>](#) has [<link to local audiovisual collections>](#) that you may link to. Standard commercial streaming options like Netflix, Crave or Disney Plus that students may also subscribe to can be an option – though some students may not have access to those services.
- Using copyrighted material in exams can be easy, as you can use the [<fair dealing policy and/or guidelines>](#). [If you need to use material beyond this](#), copyright exception [s. 30.01](#) can also apply, contact [<copyright contact>](#) if you need help to implement this copyright exception as there are rules that need to be followed to use it.

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## **Rapidly Shifting Your In-Person Course to Online: Copyright Considerations**

*(From University of Toronto and University of Minnesota).*

*(This document is evolving and subject to change. Last updated March 16, 2020.)*

### **Rapidly shifting your course from in-person to online**

Pedagogical and technical issues may make the shift from in-person to online teaching a challenge but copyright concerns should not be a significant barrier!

**Key points to remember:**

1. Most of the legal issues are the same in both contexts.
2. If it was okay to do in class, it is often okay to do online – *especially* when your online access is limited to the same enrolled students.
3. You can continue to apply the **<fair dealing policy and/or guideline>**.

**Recording video of yourself, live-casting lectures, etc.**

\* Note from Heather:

The following information was created for University faculty and therefore we will need to address the fact that the University sector gives far more protections to their faculty.

As noted above when posting slides/lectures we recommend hosting them on a cloud-based platform when they do not include others' copyrighted materials. If faculty would like to record these lectures or post audio to their slides we suggest using a private channel such as YouTube, Vimeo, or Zoom. Faculty can then share links to these materials via the LMS. These links can then later be destroyed by the faculty thus making the faculty's IP inaccessible to the employer.

If the faculty has included other's (copyrighted) work in their materials as permitted under fair dealing exceptions, they can continue to use the LMS as usual and whatever institutional streaming license the institution has access to. These works will also fall under the *Copyright Act* section 30.01(6). Which requires that these "lessons" be destroyed 30 days after the students who are enrolled in the course receive their final evaluations.

**Slide Images**

Just as it is legal to show slides with images in class, it is generally legal to show them to students using live video conferencing or recorded videos, as long as your new course video is being shared through a password protected course website like [<your LMS>](#).

Many instructors routinely post a copy of their slides as a file for students to access after in-person course meetings. In most cases, faculty will own the copyright in or have license to use their slides. However, if you are incorporating third-party materials into your lessons, they should be in keeping with [<fair dealing policy and/or guideline>](#) or other license agreements.

### **In-lecture use of audio or video**

Here, the differences between online and in-person teaching can be a bit more complex. Playing audio or video of legally-obtained physical media (music or audio visual materials like Dvds or Cds for example) during an in-person class session is permitted under [Section 29.5 of the Copyright Act](#). However, that exemption generally doesn't cover playing the same media online.

If you can limit audio and video use for your course to relatively brief clips, you may be able to include those in lecture recordings or live-casts using your institution's fair dealing guidelines in the *Copyright Act*. At [<College Name>](#) we have the [<fair dealing policy and guideline>](#) that allows you to use up to 10% of a copyrighted work to be distributed to students in your class only. For media use longer than brief clips, you may need to have students independently access the content outside of your lecture videos. Some further options are outlined below.

### **Where to post your videos**

There may be some practical differences in outcomes depending on where you post new course videos. [<institutional streaming server>](#) provides storage and streaming of videos and can be restricted to the students in your class only. You can also post videos within your [<LMS>](#). If you already use services like Youtube to teach, remember to continue to be copyright compliant. Please note that it is more likely that videos posted on YouTube may encounter some automated copyright enforcement, such as a takedown notice, or disabling of included audio or video content. These automated enforcement tools are often incorrect when they flag audio, video, or images included in instructional videos. If you encounter

something like this that you believe to be in error, you can contact [<copyright email address>](#) for assistance.

### **Course readings and other resources**

Hopefully, by mid-semester, your students have already gotten access to most assigned reading materials. As always, [<institutional eReserve - if applicable>](#) can help with getting things online - linking to Libraries' licensed resources, finding ebooks where available, and much more.

If you want to share additional materials with students yourself as you revise instructional plans, or if you want students to share more resources with each other in an online discussion board, keep in mind some simple guidelines below.

### **It's always easiest to link!**

Linking to publicly available online content like news websites, existing online videos, etc. is rarely a copyright issue (Better not to link to existing content that looks obviously infringing itself - Joe Schmoe's YouTube video of the entire "Avengers: Endgame" movie is probably not a good thing to link to). But linking to most Youtube videos, especially ones that allow sharing and embedding, should be fine. Linking to subscription content through the [<library>](#) is also a great option. Much of the library's licensed content will have DOIs, PURLs, or other "permalink" or "persistent link" options, all of which should work even for off-campus users. Consult the [<permanent link>](#) guide, or contact the library directly for assistance via [<copyright email>](#) or through the [<ask us chat or general reference email>](#).

### **Sharing copies and scanning**

Making copies of new materials for students (by downloading and uploading files, or by scanning from physical documents) can present some copyright issues, but they're not different from those involved in deciding whether to share something online with your students when you are meeting in-person.

At [<college>](#), faculty and instructors are encouraged to read and apply the [<fair dealing policy and guideline>](#) when they are making decisions about when they think they can make copies for students to post to [<LMS>](#). Library staff members are available to help faculty understand the relevant issues (contact [<email>](#) for more help.)

Some app tools that you can use to easily digitize fair dealing amounts of material from your phone to post to <LMS> are [Genius Scan](#), [Adobe Scan](#). Please keep in mind that you can make any scanned PDF files more accessible for your students by using an online [optical character recognition \(OCR\) online tool](#) that can be used to convert "non-selectable" text files into machine-readable or recognized text.

When an instructor needs to make more copyrighted material available to students than the <fair dealing policy and guideline> allows library staff in <Institutional eReserve - if applicable> can assist faculty in making these determinations and can also help you seek formal copyright permissions to provide copies to students – but there may be some issues with getting permissions on short timelines.

An alternative way to find course materials is to look online for free to use teaching resources like Open Educational Resources <Link to local OER library guide>. Just remember to attribute!

You can also search <college library> which has a large collection of journals and many ebooks that can support on-line learning. Your <Subject Librarian> can also help!!

### **Multimedia viewing/listening**

Showing an entire movie or film or musical work online does represent more of a copyright issue than playing it in class – but there may be options for your students to access it independently online. <college> already has quite a bit of licensed streaming video content <link to streaming video content in library> which you are welcome to use in your online course. Remember you can still link to content!

We may be able to purchase streaming access for additional media, but as this takes time, standard commercial streaming options like commonly subscribed to services like Netflix, Crave or Disney Plus that students may also subscribe to and can access using their own accounts may sometimes be the easiest option – though some students may not have access to those services. (For exclusive content, the commercial services may be the only option.)

**What can you do if you have a scheduled screening for a film that is not available online?**

If you have a scheduled film screening and the film is not available digitally through one of our electronic databases, you may be able to conduct a virtual screening using the distance education exception in the Copyright Act (Section [30.01](#)). This exception is not widely used as it includes a variety of requirements, such as:

- You must not break a technical protection measure (Section [41.1](#)) when you make the copy. The easiest way to make a copy without breaking a TPM is to use screen capture software that enables the copying of DVD content after the content has been lawfully decrypted by a licensed computer DVD player. [More information about copying audiovisual works](#);
- You must delete the copy in the Learning Management System, or password protected location you posted the audiovisual material, within 30 days after course evaluations have been issued.
- You must clearly post that the copy is being made using this exception. For example: "You are receiving access to this teaching resource under [s. 30.01](#) of the *Copyright Act*, for use in this class only. If you retain a copy, delete the copy 30 days after you have received the final evaluation for the course."

One way to meet the requirements of this section may be to live-stream the screening (accessible only to your students). If you do make a recording, please contact the <Copyright Advisory Office> to ensure that you meet the requirements above.

### **Ownership of online course materials**

#### **\* Note from Heather:**

The following information was created for University faculty and does not apply to the college sector. As you will see the University sector gives far more IP protections and rights to their faculty.

<institutional collective agreement - if applicable> affirms that faculty members own the copyright in their academic works, including instructional content. Some units and departments have different policies around ownership of course materials at the unit level, but you would likely already be aware of that if it is applicable. Some units may also have some shared expectations of shared -access- to course video for continuity of educational

experiences, without those expectations affecting the ownership of the materials. Instructors may want to include language [<provide link>](#) in their course management site or course syllabus that makes it clear that students cannot reuse or re-post their instructor's course materials without permission.

University policies also affirm that students own the copyright in their own coursework. Instructors can require them to submit it in particular formats, but the students continue to own their works unless a separate agreement is signed by the student. Please note that students should be aware that posting instructors content from your course to on-line course sharing sites like OneClass or Course Hero can be perceived as an academic integrity issue under [<institutions language or policy on this.>](#)

**Consult the [\\_<library copyright website>](#) or email [<email>](#) if you have other questions about copyright.**



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