

Copyright Guidelines for UBC Faculty, Staff and Students

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Please see copyright.ubc.ca for the latest information on copyright



a place of mind

THE UNIVERSITY OF BRITISH COLUMBIA

Introduction

UBC and its faculty, staff and students are creators of various forms of intellectual property, as well as consumers of intellectual property. As creators, we rely on the protections offered by intellectual property laws to ensure that our work product is protected from improper use. As consumers of intellectual property, we are legally (and morally) obligated to respect the intellectual property rights of others, just as we expect others to respect our intellectual property rights.

One intellectual property right that is very important to UBC faculty, staff and students is **copyright**.

Infringing copyright is a serious matter and UBC requires each of its faculty, staff and students to comply with copyright law and the terms of the UBC Copyright Requirements. This document supplements the [Copyright Requirements for UBC Faculty and Staff](#) and provides a basic summary of copyright law, as well as guidance on best practices and information to help you understand what you can and cannot do with copyrighted works. You can find more detailed practical information by consulting [Fair Dealing in Practice](#).

If, after reviewing these guidelines, you have any questions or concerns about your obligations under copyright law or these guidelines, or wish to receive additional guidance, please contact ubc-copyright@interchange.ubc.ca.

Your Copyright Obligations

Copyright is the sole and exclusive right of a copyright owner to produce, reproduce, perform, publish, adapt, translate and telecommunicate a work, and to control the circumstances in which others may do any of these things. Copyright owners grant permission to others through what are legally referred to as licences.

Copyright law in Canada protects a wide range of works. If you wish to reproduce a substantial part of a copyrighted work, you may only copy the work if you have permission from the copyright holder or if your copying falls within one of the exceptions set out in the [Copyright Act](#) that allows for such copying. The *Copyright Act* allows such exceptions for certain users, such as universities and persons acting under the authority of a university. These exceptions provide a balance between providing copyright owners with legal rights to control use of their works, and allowing users to access those works.

In November 2012, certain provisions of Bill C-11, The Copyright Modernization Act were brought into force. These legislative changes significantly update the *Copyright Act*, expand various educational exceptions available to UBC, and provide greater flexibility for UBC faculty and staff to rely on these exceptions to reproduce works within the university environment.

Steps to Determine Your Ability to Copy

The flowchart sets out a step-by-step process that guides you through the questions you need to answer to determine your ability to copy specific works.

1. Is the work protected by copyright?

All original literary, dramatic, musical and artistic work, computer programs, translations and compilations of works are protected by copyright, unless the author(s) of the work died more than 50 years ago (and note that

translations or annotations of such works are also copyrighted). If in doubt, you should presume that the work is protected by copyright.

2. Is there a Digital Lock protecting the work?

In the *Copyright Act*, there are two forms of technological protection measures (commonly referred to as TPMs or Digital Locks), which we describe as an access control, and a use restriction.

Access Control:

An Access Control is any technology, device or component that controls or restricts the access to a work, including passwords that prevent access to a work.

It is an offense under the *Copyright Act* to “circumvent” an Access Control. In this context, “circumvent” means:

to descramble a scrambled work or decrypt an encrypted work or to otherwise avoid, bypass, remove, deactivate or impair the [Access Control], unless it is done with the authority of the copyright owner”
(See section 41 of the *Copyright Act*)

If there is an Access Control on the work, you must not circumvent the Access Control to access the work, unless you are authorised by the copyright owner to do so. This means that even if you may otherwise have been able to copy a work under one of the exceptions within the *Copyright Act* (including educational exceptions and fair dealing exceptions), you cannot circumvent the Access Control to obtain a copy of that work.

For example, if you have been provided with an authorised password, or login using your CWL username and password to access works that are licensed by UBC, then you can legally access the work. However, if you have obtained a password or key via unauthorised means, e.g. found the solution to breaking a digital lock published on-line, then it would be an offense to circumvent the Access Control to access the work.

Use Restriction:

A Use Restriction is any technology, device or component that restricts you from doing something (other than accessing a file). For example, a Use Restriction can be a program that prevents you from copying text from a file, or prevents you from downloading a copy of the file.

Unlike an Access Control, it is not an offense under the *Copyright Act* to circumvent a Use Restriction (but see below). It *is*, however, an offense to offer services to the public or to actually provide services of circumventing any kind of Digital Locks, including Use Restrictions or to provide technologies, devices or components that circumvent Digital Locks.

User Rights that are Unavailable if a Digital Lock is Circumvented:

The following user rights are unavailable if you have circumvented a Use Restriction or an Access Control:

- Section 29.22 – Reproduction for Private Purposes (aka the ‘form-shifting exception’)
- Section 29.23 – Fixing Signals and Recording Programs for Later Listening/Viewing (aka the ‘time-shifting exception’)
- Section 29.24 – Back Up Copies - permits copying source copies for back up purposes

- Section 30.04 – Work available through Internet - which permits educational institutions and those acting on their authority, to reproduce, communicate and perform works available through the internet

3. Is copying of the work permitted under the *Copyright Act*?

Exceptions under the *Copyright Act* permit certain things to be done by educational institutions, or persons acting under the authority of an educational institution, that would otherwise infringe copyright. The “fair dealing exception” is one such exception.

A. The Fair Dealing Exception:

The “**Fair Dealing Exception**” allows any person to use a copyrighted work for the allowable purposes of research, private study, education, satire, parody, criticism, review, or news reporting, without the copyright holder’s permission. To qualify for the Fair Dealing Exception, two tests must be passed.

The first test is: is the dealing for an allowable purpose stated in the *Copyright Act*? Allowable purposes are: research, private study, education, satire, parody, criticism, review, or news reporting.

The second test is: is the dealing “fair”? The Supreme Court of Canada has stated that deciding whether a particular instance of copying may be considered to be “fair” requires a consideration of all of the relevant factors, including the following:

- (a) the purpose of the proposed copying, including whether it is for research, private study, education, satire, parody, criticism, review or news reporting;
- (b) the character of the proposed copying, including whether it involves single or multiple copies, and whether the copy is destroyed after it is used for its specific intended purpose;
- (c) the amount of the dealing from the individual user’s perspective, including the proportion of the work that is proposed to be copied and the importance of that excerpt in relation to the whole work;
- (d) alternatives to copying the work, including whether there is a non-copyrighted equivalent available;
- (e) the nature of the work, including whether it is published or unpublished; and
- (f) the effect of the copying on the work, including whether the copy will compete with the commercial market of the original work.

How does “fair dealing” apply to faculty and staff who want to make copies for distribution to students? Further guidance was provided in 2012 from the Supreme Court of Canada in this particular context. In its 2012 decision, the Supreme Court of Canada considered copying of short excerpts by teachers for class handouts, under the “research or private study” fair dealing purposes. The Court explicitly recognized that teachers “are there to facilitate the students’ research and private study”, that teachers cannot “be characterized as having the completely separate purpose of ‘instruction’”, and that the teachers’ purpose in providing copies to students is “to enable the students to have the material they need for the purpose of studying.” The Court characterized teachers as sharing a “symbiotic purpose with the student/user who is engaging in research or private study.” On this basis, the Court decided that the Fair Dealing Exception allows

teachers to make copies of short excerpts of copyrighted works and distribute them to students as part of classroom instruction, without a prior request from a student, subject to appropriate conditions.

UBC has developed the Fair Dealing Requirements for Faculty and Staff in close consultation with the Association of Universities and Colleges of Canada. These Requirements set out the specific requirements that UBC staff and faculty members must meet if they wish to avail themselves of the Fair Dealing Exception. UBC has also developed [Fair Dealing in Practice](#), which is intended to clarify the application of the Fair Dealing Requirements to copying in a variety of contexts.

Faculty members may be allowed under the [Fair Dealing Requirements](#) to post copyrighted materials onto secure UBC learning management systems. For further information regarding posting materials onto UBC's learning management systems, please see the [Digital Classroom FAQ](#). Additional information can also be found at [Copying For Posting in a Learning Management System](#).

Important note: Some [UBC digital licenses](#) that provide access to publications in electronic format may restrict the making or dissemination of copies and limit fair dealing rights. If there is a conflict between the terms of a license and the [Fair Dealing Requirements](#), **the terms of the license apply**.

B. Personal Use Exceptions:

There are also the following “personal use” fair dealing exceptions:

Non-commercial User-generated Content (aka ‘mash-up exception’):

- An individual may, for non-commercial purposes, use a published work to create a new work provided that the individual had reasonable grounds to believe that the published work used did not infringe copyright, the individual mentions the source of the published work and the use of such published work does not have a substantial negative effect to the copyright holder of the published work.

Reproduction for Private Purpose (aka ‘form-shifting exception’):

- An individual may reproduce, for a private purpose, any work, if the source copy was legally obtained and the individual does not circumvent an access Digital Lock (see above) in order to reproduce the work. For example, this allows you to copy a song purchased from iTunes from your computer onto a device, such as an iPod, or files from a legally purchased CD to your computer. This exception does not allow you to:
 - copy songs onto a CD or mini-disc (or any other audio recording medium);
 - give the reproduction away; or
 - keep the reproduction if the original version is given away, rented or sold.

Fixing Signals and Recording Programs for Later Listening/Viewing (aka ‘time-shifting exception’):

- An individual can fix a communication signal or copy a work, sound recording or performance being broadcast for the purpose of privately viewing it at a later time, provided that the signal is received legally, the individual does not circumvent an access Digital Lock in order to fix the signal or copy the work, only one recording is made and such recording is not given away. For example, this allows you to record a show on your PVR or other recording device to watch at a later time.

Backup Copies:

- An individual can make a backup copy of a work to protect against the source copy being lost, damaged or otherwise rendered unusable, if the source work is legally obtained by the individual, the individual does not circumvent an access Digital Lock in order to back-up the work, and the backup copy is not given away.

C. Educational Exceptions:

Educational institutions and persons acting under the authority of an educational institution are also allowed to do any of the following:

Reproduction of Canadian legislation:

- reproduce enactments and consolidations of enactments of the Government of Canada, and decisions and reasons for decisions of federally-constituted courts and administrative tribunals, provided due diligence is exercised in ensuring the accuracy of the reproduced materials and the reproduction is not represented as an official version;

Reproduction for display:

- reproduce a work, or do any other necessary act, in order to display the work for education or training purposes. However, this exception is not available, except in the case of manual reproduction (e.g. onto a dry-erase board, flip chart or other surface intended for displaying handwritten material) for works that may be located with reasonable effort, are commercially available on the Canadian market within a reasonable time and for a reasonable price, in a medium appropriate for education or training purposes;

Reproduction for tests or exams:

- reproduce, translate or perform a work in public on the premises of UBC, as required for a test or examination, provided the work is not already available in a commercial format;
- communicate a work by telecommunication to the public situated on the premises of UBC, as required for a test or examination, provided the work is not already available in a commercial format;

Performances, sound recordings and telecommunication:

- carry out the following performances, if performed on UBC premises for educational or training purposes and not for profit, before an audience consisting primarily of students, faculty or any person who is directly responsible for setting a curriculum for UBC:
 - the live performance in public, primarily by UBC students, of a work;
 - the performance in public of a sound recording or of a work or performer's performance that is embodied in a sound recording;
 - the performance in public of a work at the time of its communication to the public by telecommunication; and/or
 - the performance in public of a cinematographic work,

Each of the above performances are only allowed if it is not based on an infringing copy of the work;

Broadcasts:

- make a single copy of a work at the time that it is communicated to the public by telecommunication; and keep the copy for up to thirty (30) days to decide whether to perform the copy for educational or training purposes;

Reproduction for lessons by telecommunication:

- communicate a lesson (including tests or exams), to the students enrolled in that specific course, by telecommunication for education or training purposes, and record such lessons. The student can also make a copy of such telecommunicated lesson to be viewed or listened to at a later time, provided that:
 - the student and the institution must destroy the recording or copy within 30 days after receipt by students of their final course evaluations;
 - the institution must take reasonable measures to limit the audience to students only, and to prevent the students from fixing, reproducing or communicating such lessons except as permitted under this exception.

The recordings cannot be sold or distributed widely (beyond the audience of students enrolled in the class);

Work available through Internet:

- reproduce, communicate by telecommunication and perform for an audience consisting primarily of UBC students or other persons acting under UBC's authority, for educational or training purposes, works or other subject matter that is available through the Internet, unless:
 - the works are protected by a Digital Lock that restricts access to the work or other subject-matter or to the website;
 - a clearly visible notice (and not merely the copyright symbol alone) prohibiting such act is posted on the website or on the work or other subject matter itself; or
 - the educational institution or person acting under its authority knows or should have known that the works were made available on the Internet without consent of the copyright owner;

and the following must be mentioned in respect of the work:

- the source; and
- name of author, performer, maker or broadcaster (if provided in the source);

News and commentary

- make, at the time of its communication to the public by telecommunication, a single copy of a news program or a news commentary program, excluding documentaries, for the purposes of performing the copy for the students of UBC for educational or training purposes; and
- perform the copy in public before an audience consisting primarily of students of UBC on its premises for educational or training purposes.

Educational institutions relying on this exception no longer have to pay royalties, destroy copies of news or commentary programs after one year, or keep records of the copies made of news or commentary programs;

Reproduction for persons with perceptual disabilities:

- copy an entire work (other than a cinematographic work) into an alternative format including translation, adaptation and performance in public (except the making of a large-print book) for the

purpose of serving students with perceptual disabilities as long as such an adaptation is not already commercially available in that format.

D. Other Relevant Exceptions under the *Copyright Act*:

The following are other exceptions under the *Copyright Act* that apply generally, but are relevant to educational institutions and persons acting under the authority of an educational institution.

Computer Programs:

If you own a copy of the computer program that is authorized by the owner of the copyright, or has a licence to use a copy of the computer program, you may:

- reproduce the copy by adapting, modifying or converting it, or translating it into another computer language, if you prove that the reproduced copy:
 - is essential for the compatibility of the computer program with a particular computer;
 - is solely for your own use; and
 - was destroyed immediately after you ceased to be the owner of the copy of the computer program or to have a licence to use it;
- reproduce for backup purposes the copy or a reproduced copy referred to above if you prove that the reproduction for backup purposes was destroyed immediately after you ceased to be the owner of the copy of the computer program or to have a licence to use it; and/or
- reproduce the copy for the sole purpose of obtaining information so you can make the program and any other computer program interoperable.

Encryption Research, Security and Temporary Reproductions for Technological Processes:

- reproduce a work or other subject-matter for the purposes of encryption research if:
 - it would not be practical to carry out the research without making the copy;
 - you have lawfully obtained the work or other subject-matter; and
 - you have informed the owner of the copyright in the work or other subject-matter;
- reproduce a work or other subject-matter for the sole purpose, with the consent of the owner or administrator of a computer, computer system or computer network, of assessing the vulnerability of the computer, system or network or of correcting any security flaws; and/or
- make a reproduction of a work or other subject-matter if such reproduction:
 - forms an essential part of a technological process;
 - has the sole purpose of facilitating a use that is not an infringement of copyright; and
 - exists only for the duration of the technological process.

4. Do you need to include the work in a UBC coursepack?

If you need to make copies of a work to be included in a coursepack for sale to students, you should contact the UBC Bookstore, which will assist you and ensure that the required copyright approvals are obtained. For additional information about coursepacks and copyright, see [Copying for Course Packs](#).

Vancouver campus: customcourse@mail.bookstore.ubc.ca

Okanagan campus: ubco.coursematerials@ubc.ca

5. Does UBC have an existing license which allows you to copy the work?

UBC has obtained permission for its faculty and staff to copy the work under various license agreements between UBC and the author or copyright owner, a publisher, or a publisher's representative. UBC has more than 950 electronic subscription licenses that give faculty and students access to millions of copyrighted articles and other works. Please check the License Information Database at <http://licenses.library.ubc.ca/>, which has been compiled by UBC Library for all such licenses. If you need assistance, contact UBC Library through lib-license@interchange.ubc.ca.

6. Do you wish to request consent directly from the copyright holder?

If the copying of a work is not permitted through any of the above means, you should consider whether another work (for which UBC already has a license) would be an acceptable alternative. If not, and if you still wish to use the work, the staff in Permissions Services of the Scholarly Communications and Copyright Office can assist you in seeking the permission of the copyright holder.

If the copyright owner agrees to our request, the permission to copy the work will generally come by way of a one-off transaction license agreement between UBC and the copyright owner. There is no obligation for the copyright holder to grant our request and the copyright holder may require payment of a license fee. Permissions Services will work with you in the event that a license fee is required. UBC has allocated resources to assist with the payment of such fees and Permissions Services but these resources may not cover the entire cost of such licence fees.

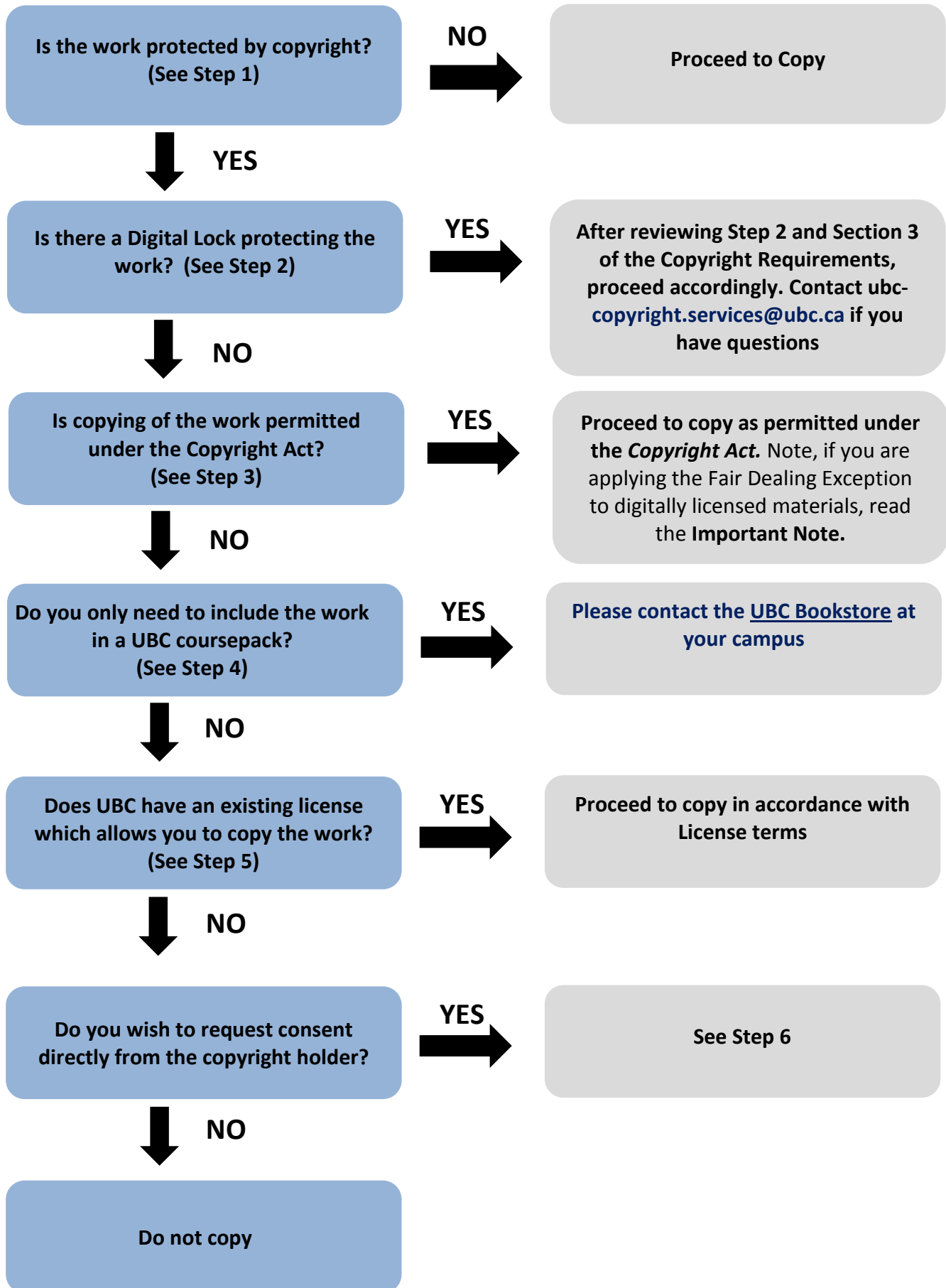
For assistance with seeking permission from a copyright holder, or if you have any questions about obtaining a copyright permission for a particular copyrighted work, please contact Permissions Services at copyright.services@ubc.ca.

Conclusion

This document is an overview and not a comprehensive summary of the copyright laws of Canada. Please note that there are additional exceptions available to libraries (including university libraries) under the *Copyright Act*. Future court decisions and amendments to legislation will affect the scope of these exceptions. UBC may also revise and update the [Fair Dealing Requirements](#) and other documents posted at copyright.ubc.ca, from time to time.

If, after reviewing these guidelines, you have any questions or concerns about your obligations under copyright laws or these guidelines, or wish to receive additional guidance, please refer to the [Copyright FAQ](#) or contact copyright.services@ubc.ca.

Flowchart: Copyright Guidelines for UBC Faculty, Staff and Students



copyright.ubc.ca

The University of British Columbia
Vancouver Campus
Scholarly Communications and Copyright Office
Walter C. Koerner Library
Vancouver, B.C., Canada V6T 1Z2
Email: copyright.services@ubc.ca

The University of British Columbia
Okanagan Campus
3333 University Way
Kelowna, B.C., Canada V1V 1V7
Email: ctl.ubco@ubc.ca



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