Introduction to Canadian Copyright and Open Licensing for OER

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CARL OE Webinar Series, December 10, 2019
What do you think of when you hear the word, “copyright?”
Copyright is an enclosure mechanism and the Canadian Copyright Act is a policy instrument created by parliament.

The Act provides rights holders with the sole right to produce, reproduce, perform, or publish works subject to copyright.

The Act provides users with limited rights (comparatively) to make use of those works.
The Copyright Act gives rights holders the sole right to produce, reproduce, perform, or publish a work. These rights are immediate, time limited, and transferrable. Employers are default rights holders.

The Copyright Act includes exceptions to infringement that give users the right to deal fairly with a substantial amount of a work protected by copyright.

The judicial branch of government (the courts) interprets the Copyright Act, making decisions about specific cases of alleged infringement.
OER

Open Educational Resources are teaching, learning and research materials in any medium – digital or otherwise – that reside in the public domain or have been released under an open licence that permits no-cost access, use, adaptation and redistribution by others with no or limited restrictions. (UNESCO)
licence (noun)
license (verb)

OER

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Copyright ownership and OER development.

- Who holds the rights in educational resources developed at your institution?
  - collective agreements?
  - institutional policies?
- What about collaborative educational resources?
- Does the rights holder want to make their educational resources open?
  - publishing agreements?
OER Basics

Wiley’s requirements for OER (5Rs):

1. **Retain** – the right to make, own, and control copies of the content (e.g., download, duplicate, store, and manage)
2. **Reuse** – the right to use the content in a wide range of ways (e.g., in a class, in a study group, on a website, in a video)
3. **Revise** – the right to adapt, adjust, modify, or alter the content itself (e.g., translate the content into another language)
4. **Remix** – the right to combine the original or revised content with other open content to create something new (e.g., incorporate the content into a mashup)
5. **Redistribute** – the right to share copies of the original content, your revisions, or your remixes with others (e.g., give a copy of the content to a friend)

Open licences grant permission to use a copyright-protected work with few or no restrictions and can allow for uses consistent with the 5Rs.

**Open licensing is a core infrastructural element of OER.**

The copyright status of a work does not change when a standard open licence is assigned by the rights holder or someone licensed to do so.

**Creative Commons licences are the most common OER open licences.**

http://opencontent.org/definition/
Global network and movement
Nonprofit organization
Set of legal tools
  CC licences make it easy for rights holders to share their works with the public under more permissive terms than the default “all rights reserved.”
Creative Commons licences

Licence elements:

BY = attribution
SA = share alike*
NC = noncommercial
ND = no derivatives*

*SA, ND triggered by distributing modified versions

Fig. 9: CC licenses arranged from most to least permissive.

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Attribution 4.0 International (CC BY 4.0)

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https://creativecommons.org/licenses/by-nc-nd/4.0/
Assigning a CC licence to an OER

Choose a licence that is OER compatible.
https://creativecommons.org/choose/

Mark the work with the CC button.
https://creativecommons.org/about/downloads/

- Best practice: include a statement and link back to the licence on the CC website.
  https://wiki.creativecommons.org/wiki/Marking_your_work_with_a_CC_license
Example

Promoting Use and Contribution of Open Educational Resources

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http://oasis.col.org/handle/11599/2659
Copyright and using third party content (aka other people's work) in an OER.

- Find content that is *already* available for use.
- Ask the rights holder for permission to use the work.
- Assess whether a statutory exception to infringement might apply to your use.
Find content that is available for use in an OER.

- Public domain / not protected by copyright
  - CC0 or other statement of rights waiver or public domain status.
  - Works for which the copyright term has expired (Canadian Copyright Term Flowchart, UA Copyright Office).
  - Insubstantial amounts of a work (Substantiality, UA Copyright Office).
  - Facts.

- Terms of use that support inclusion in an OER
  - Compatible Creative Commons or other open licences.
Ask the rights holder for permission to use their work in an OER.

- Can you identify and contact the rights holder?
  - If yes, [OER permission templates](https://ua-copyright-office.ca) (UA Copyright Office).
  - If no, apply for an [Unlocatable Copyright Owner](https://copyright-board.ca) licence from the Copyright Board of Canada (or find another work to use).
https://search.creativecommons.org/
Assess whether a statutory exception to infringement might apply to your use.
- **S29, Copyright Act**: Fair dealing for the purpose of research, private study, education, parody or satire does not infringe copyright.
- Allows for use of copyright-protected works without payment or permission.

- There is no “OER caselaw” in Canada.
- Courts will use **multiple factors** to make a fair dealing determination.
- Who would make the fair dealing argument in a case of infringement?
- Institutional fair dealing guidelines are not intended to support OER.
Is including third party content in OER fair?

*FACTORS CONSIDERED BY SCC (could be others)*

**DEALING:**
- Purpose - education
- Character - broad distribution
- Amount - substantial to entire
- Alternatives - case by case analysis

**ORIGINAL WORK:**
- Nature - what was creator’s intent?
- Effect of dealing on - case by case analysis

*CCH v. LSUC*
Summary

● Copyright is a limited enclosure mechanism
● Open licences are an infrastructural element of OER
● Rights holder assigns open licences (who holds the rights in ER is specific to the educational institution)
● When using third party content: supportive terms of use, permission, or user rights / statutory exception to infringement
Questions?

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Copyright Office, University of Alberta

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Resources and references not noted within presentation

Web-based open content for *CC Certificate for Educators and Librarians*: https://certificates.creativecommons.org/cccertedu/

Source of ‘Figure 9’ on Slides 11 and 14:

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