

Copyright issues regarding images copied from the Internet.

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Images are “whole works” (like a poem, short story or novel) and as such are protected by copyright unless copyright has expired.

The Copyright Act grants certain limited rights to use works which would otherwise be protected by copyright. These are called “fair dealing” rights. The problem with trying to rely on the fair dealing provisions to copy works is that there are no clear cut rules about what can and can't be copied and what will constitute an infringement. These problems can be circumvented by using images offered under an “open access” licence. There are millions of images available on the web under open access licences such as creative commons licences (see #4 below).

There have been recent changes in the Copyright Act which mean that in certain limited circumstances images can be copied from the internet and used in educational presentations. It is important to note that an image used should be fully attributed. Failure to attribute or an incorrect attribution could be a breach of the creator's moral rights.

1. Images for the Purposes of Teaching

Section 44(1)(b) of the Copyright Act permits the making of a single copy of an artistic work (which includes a photograph or an illustration), literary work, sheet music or dramatic work to use for the purposes of instruction. This means you can make a single copy of a work and include it in your power point presentation for the purposes of teaching. Whether it is sourced from a hard copy original or from the internet is immaterial.

If staff want to make multiple copies of a work off the internet for students to use in the course of instruction, then the work must be copied and placed on a password protected site (such as CECIL) and only available to students in a particular course. There are other requirements which must be complied with. See the staff newsletter on copyright “Use of Copyright Material 2009” for more details.

2. A Departmental Presentation.

If you are giving a seminar for staff and students, the copying could not be done under s44 above, because s44 only applies to use in a “course of instruction”. Instruction is defined as giving a lesson to a group of students or receiving the lesson as a student.

Under s48 of the Act an educational institution can make a copy of a “communication work” and communicate it within the institution for its educational purposes, without infringing copyright, on the proviso that there is no licensing scheme for that communication work. Communication work includes a work copied off the Internet. The University currently has licences for copying off-air (radio and television) and for copying from hard copy originals (CLL), but we are not currently aware of a licence to copy off the Internet. Once we are offered a licence to copy from the Internet we won't be able to rely on this provision. In the interim, we can rely on this provision. Copying of a Google image for the purposes of this type of presentation would in my view fall under this provision.

3. Presentation at a Conference

There is nothing under the Copyright Act, or our licences, which would permit the copying of an artistic work for a conference at another institution. If it was a conference being put on by the University and we were copying off the Internet for our educational purposes, we might just squeeze in under s48 but this would not cover copying for a presentation at another institution as

the work copied from the Internet can only be circulated within the institution doing the copying for its own educational purposes.

There is a provision in the Act which permits copying for the purposes of criticism and review, but you would need to use the images to support your criticism or review, not just using them to make your display more compelling or pretty. If you were critiquing or reviewing the image, theoretically you could include them in a post conference publication. The courts have said that if the use under this section conflicts with the owner's exploitation of the image then it will be a breach of copyright. The owner could still challenge your use so you need to keep in the back of your mind whether or not the owner would have any reason to challenge your use of the images. There is a greater risk of challenge if the work is made available on the Internet.

4. Licensing

It pays to check the terms and conditions of Google images as some of these may be offered under an open access licence. There are a number of websites which offer images under a creative commons licence. It would be worth checking these out. If you Google "open access images" you will come up with a whole list of websites offering images. They usually require that the use is "non commercial" and the work is fully attributed.

Try the "Public Library of Science" which has material offered under creative commons licenses:
<http://www.plos.org/>

The link below also has information about how to determine whether or not you can use an image sourced from the web: <http://www.netknowhow.ca/nkhcrimg.html>

As noted above further information is available in the "Use of Copyright Materials 2009" available at:

<http://web.auckland.ac.nz/uoa/for/staff/teaching/copyright-for-staff/>