

Guidelines for Digitizing Copyrighted Materials

Even where privacy concerns are addressed, copyright restrictions may apply. Any copyright in a work must be respected when items are digitized. Ownership of a physical copy of an item does not necessarily equate to or imply copyright in relation to a work.

The Canadian *Copyright Act* and its regulations, provide legal protection to original works of authorship in Canada:

[Copyright Act, RSC 1985, c C-42, as amended](#)

[Copyright Regulations, SOR/97-457, as amended](#)

[Exceptions for Educational Institutions, Libraries, Archives and Museums Regulations, SOR/99-325, as amended](#)

This legislation is supplemented by court decisions, other regulations, related statutes, and international law. Permissions and certain provisions of copyright law enable libraries and other institutions to digitize materials even if another person holds copyright in the material.

Here are some basic questions to help determine whether material for digitization may raise any copyright concerns. Please note: Nothing that follows constitutes legal advice.

1. Do you own or were assigned copyright to the content of the material?

This may be the situation if you

- are the creator of the material or were assigned copyright to the material;
- did not create the material jointly with anyone else;
- have never licensed or granted anyone else exclusive permission or rights to reproduce the material;
- have never assigned anyone else the copyright in the material; and
- have never waived any moral rights or the right to be associated with the material as its creator.

If you agree with all of the above and answered yes to question 1, then the material probably doesn't raise any copyright concerns.

If you answered no to question 1 or disagreed with or were unsure about any part of it, then the material in question may raise copyright concerns. Please consider the following questions:

2. Do you know or can you find out who owns the copyright in the material?

This may be the situation if you

- created the material and assigned the copyright to someone else, for example, a publisher;
- did not create the material and know who did; or
- do not know who created the material but you know who owns copyright; or
- you can take steps to determine who owns copyright in the material .

If you answered yes to question 2, then the material in question may raise copyright concerns that you can address by seeking permission from the copyright owner.

If you answered yes to question 2, then please also consider the following question:

3. Has the copyright owner already granted permission to reproduce the material by digitization?

This might be the situation if, for example

- the copyright owner has already given you permission for reproduction including digitization;
- the copyright owner has licensed the material with an appropriate Creative Commons license; or
- the copyright owner has licensed the material with another blanket license such as an open government license.

If you answered yes to question 3, then digitization probably doesn't raise any copyright concerns.

If you answered no to any of the above questions, then please consider the following:

4. Might the material be in the [public domain](#)? Note that "the public domain" is not the same as being publicly available or accessible.

This might be the situation if

- the material was explicitly created to be in the public domain; or
- the material was or may have been protected by copyright but the term has expired.

If you answered yes to this question, then the material probably doesn't raise any copyright concerns.

However, whether an item is in the public domain is not always easy to determine. You may need to seek legal advice.

If you answered no to questions 1, 3, and 4, and have been unable to obtain permission to reproduce, then the material raises copyright concerns that you will need to address before digitization can proceed.

Copyright rules may still permit us to digitize the material. You may need to seek legal advice.