

UNIVERSITY LIBRARIES' COPYRIGHT ASSESSMENT TOOL

Approved: October 22, 2015

A. BACKGROUND AND PURPOSE

Dalhousie University Libraries is working to improve access to its collections by disseminating materials on the Internet, including digital archives from the Dalhousie University Archives Permanent Collection, research data, geospatial data, publications, theses and dissertations, and other material deposited with the Libraries by members of the Dalhousie community and general public.

This “**copyright assessment tool**” has been designed to guide the assessment of risk associated with dissemination activities in accordance with section D.5 of the Dalhousie *Protocol for Takedown Requests Regarding Materials in the Libraries' Online Collections*.

In this document, “risk” means the likelihood that online dissemination of materials without the permission of the copyright owner would lead to claims of copyright infringement or expose the university to liability or other damage.

Libraries staff will consider the criteria identified in section B of this copyright assessment tool when deciding whether or not to disseminate materials on the Internet through one of the access systems maintained by the University Libraries.

The criteria help determine the likelihood that online dissemination of copyrighted materials without the permission of the copyright owner would: damage the reputation of the University or a third party, damage the University's relationship with donors and impacted communities, or expose the University to copyright infringement claims.

The assessment leads to one of two determinations:

1. **Low risk** – Libraries may disseminate materials without requiring the copyright owner's permission.
2. **High risk** – Libraries will seek copyright owner's permission before disseminating materials.

B. CRITERIA

1. There are four criteria:
 - a. An owner's economic rights
 - b. An author's moral rights
 - c. An owner's history of copyright defense
 - d. An author / owner's relationship to Dalhousie University

C. OWNER'S ECONOMIC RIGHTS

Criterion

Material is *high-risk* if there is a reasonable possibility that the material has a commercial value and online dissemination without permission would harm the copyright owner's ability to obtain economic benefits from their protected material.

Application

Determine whether there is a reasonable basis for thinking that the material could circulate on its own as an "article of commerce" from which the copyright owner could obtain economic benefits.

This criterion weighs heavily in the assessment of risk.

Indicators of high-risk

1. The material is commercially available elsewhere.
2. The material was produced with commercial intent, whether realized or not.
3. The artistic or literary qualities of the material exhibit a high degree of skill and judgement.
4. The informational content of the material could be commercialized.
5. The author of the material is a prominent public figure for whom there may be a market for their unpublished works and associated ephemera.

Material to watch for

1. Publications, including published books and articles, reports and other documents published with ISBNs or ISSNs, and theses and dissertations.
2. Unpublished manuscripts created with intent to publish.
3. Artistic works created with intent to disseminate through exhibitions, screenings, presentations, publications, and other methods of controlled access.
4. Records containing proprietary commercial information or research data.
5. Correspondence with prominent literary, artistic, scholarly or public figures.

D. AUTHOR'S MORAL RIGHTS

Criterion

Material is *high-risk* if there is a reasonable possibility that the presentation of the material online would in some way alter it to the detriment of the author's moral rights.

Application

Determine whether the online presentation of the digital access copy significantly distorts the appearance or meaning of the material such that the literary or artistic integrity is damaged and the author's honour or reputation is potentially harmed.

Generally it is expected that this criterion will rarely lead to a high-risk assessment unless the material is an artistic or multimedia work.

Indicators of high-risk

1. The material is a highly creative work produced in digital form in an uncommon format that does not easily normalize into a standard digital access format.
2. The material is a highly creative work produced in an analog format that does not easily transfer to a digital preservation format and/or a standard digital access format.

Material to watch for

1. Artistic or multimedia works.

E. OWNER'S HISTORY OF COPYRIGHT DEFENCE

Criterion

Material is *high-risk* if the copyright owner is known to have a history of actively defending their copyright and online dissemination without permission could expose the university to liability for claims of infringement.

Application

Consult relevant records maintained by the Libraries to determine whether a particular copyright owner is known to have actively defended their copyright in the past.

Indicators of high-risk

1. The copyright owner has engaged in copyright litigation in the past.

Material to watch for

1. Correspondence with prominent literary, artistic, scholarly or public figures.

F. AUTHOR / OWNER'S RELATIONSHIP WITH DALHOUSIE

Criterion

Material is *high-risk* if the author or copyright owner has a relationship with Dalhousie University or with significant communities important to the university and online dissemination without permission could damage that relationship or the university's reputation in the community.

Application

Consult relevant records maintained by the Libraries to determine whether a particular author or copyright owner is known to have relationship with the university that justifies treating their protected material more conservatively than material belonging to other authors or copyright owners.

Indicators of high-risk

1. The author / copyright owner is a donor of archival material to the University Archives.
2. The author / copyright owner has previously signed a license agreement with the university involving the online dissemination of their protected material.

3. The author / copyright owner is a donor to Dalhousie University.
4. The author / copyright owner is a prominent figure in the local community.

Material to watch for

2. Correspondence in an accession authored or donated by persons with a significant relationship to Dalhousie University.

DOCUMENT CONTROL

Version	Date	Author	Version Notes
Version 1	October 13, 2015	Creighton Barrett	<p>Incorporates staff feedback from earlier drafts.</p> <p>Incorporates portions of the copyright risk assessment criteria created by the Simon Fraser University Archives.</p> <p>This work is licensed under a Creative Commons Attribution-NonCommercial-ShareAlike 4.0 International License.</p>