

Copyright 101 - Everything You Need To Know In Plain English

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What is Copyright?

Copyright is a legal right which permits the copyright owner to prevent others from copying an artistic, literary, dramatic or musical work. Only the copyright owner has the legal right to reproduce the work, either in whole or in part, and in any form. The copyright owner also has the right to sue others who copy or distribute unauthorized the work without the copyright owners permission.

What is covered by Copyright?

Any original literary, dramatic, musical and/or artistic work may be protected by Copyright. Examples include: computer programs, songs, music recordings, books, plays, photographs, graphs, charts, tables, and electronic data.

Can I Copyright a Name?

Business names are properly protected by Trade-mark. In some rare cases, a trade-mark may also be protected by Copyright. In a majority of cases; however, there can be no copyright in a name only.

Can Ideas be Protected by Copyright?

Copyright generally does not extend to ideas. Some ideas may be protected by patents (such as a new invention). Copyright only extends to specific expressions of information, not to the information itself. Therefore, an idea for a new novel is not covered by Copyright, but the actual novel will be. Anyone who copies portions of the novel may be legally liable to the Copyright owner.

How Long does Copyright Last?

Copyright subsists for the life of the author plus fifty(50) years. In the case of photographs and sound recordings, Copyright subsists for fifty(50) years from the year in which those works were created.

What are Moral Rights?

The author of an artistic or literary work has the right to claim credit as the author of that work. Under certain circumstances, the author also has the right to prevent his/her work from being used in such a way as to adversely effect the author's reputation. Moral rights persist even after a work has been sold; therefore, an artist can demand that his/her work not be defaced even after the artist sells the work.

How Is Copyright Created?

Copyright is created automatically when a work is created and fixed (i.e. a permanent copy is made). Nothing has to be registered or filed with the government. If the work is not fixed, then copyright may not yet exist. For example, a poem which is still in your head, but which you have not yet put on paper, is not protected by copyright until it is

actually in fixed form.

Who owns Copyright?

The author (or artist) who created the work is generally the owner of the work. If the author (or artist) is an employee, and if the work was created as part of that persons employment, then the employer may be the owner of the work. In many cases, works are created on behalf of people who pay an artist/author for creating the work. In those cases, copyright in the work will be owned by the party who contracted for the work to be created, but only if the ownership of the copyright was specifically transferred in the contract. Simply paying someone to create a work does not entitle the payer to ownership of the copyright.

What is Copyright Registration?

It is possible to register Copyright in a work. Registering copyright can be used to protect a copyright owner's rights. In some cases, it may be required by a purchaser before copyright is assigned. A copyright registration is strong evidence that the person named in the registration is the rightful copyright owner. As a result, people often register copyright where a dispute as to ownership may arise.

How is Copyright Registered?

A copyright application is prepared and then filed with the copyright office. The copyright application will list the name the copyright owner, the name of the author, the title of the work and the type of work created. The application will also specify whether the work is published or unpublished. The government filing fee must be enclosed with the application. The Canadian copyrights office does not require an actual copy of the work.

Copyright Notice and Marking

It is common practice to identify works by their copyright owners. Usually, this is done as follows:

- Copyright, name of copyright owner, date. All rights reserved.

Or

- ©, name of copyright owner, date. All rights reserved.

While it is common practice to include a copyright notice in order to persuade others not to copy your work, it is not strictly required.

Enforcing Copyright against Copyright Infringers

Copyright infringement occurs when someone copies, either in whole or in part, a work in which copyright exists. Copyright infringement also occurs where someone knowingly distributes unauthorized copies (i.e. pirate copies) of a work in which copyright subsists.

Finally, anyone who directs or authorizes another person to make infringing copies of a work, or to distribute those infringing copies, also commits an act of copyright infringement. The copyright owner can bring lawsuits against any or all of these people for any damages resulting from the copyright infringement. If the lawsuit is successful, the copyright owner may be able to get a court order for damages, for lost profits, and/or a court injunction barring the copying and/or sale of the infringing work.

Knowingly copying or distributing unauthorized copies of a work may also be punishable under the Criminal Code.

Copyright and Industrial Design

Copyright in an esthetically appealing design, even if it is artistic in nature, cannot be enforced if it is applied to a useful item and if more than 50 of those items are produced. For example, the three dimensional design of a chair, even if it appears unusual or artistic, may not be protected by Copyright. However, these types of designs may be protected by an Industrial Design registration (design patent).

International Copyright

Canada is a member of the Bern Convention on Copyright and the Universal Copyright Convention. Under these conventions, copyright protection in one country is extended to copyright protection in all of the convention countries.

Licensing and Sale of Copyright.

Copyright can be a valuable and desirable property. It can be bought, sold and licensed like many other types of property. To sell copyright, it is usually advisable to record the sale in a written document (an agreement of purchase and sale). In the case of licenses, especially licenses involving periodic royalty payments, it is advisable to record the license in a written license agreement signed by all the parties. Any contract for services which may result in the creation of copyright should include clauses relating to the ownership of the copyright created.