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du Canada**

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d'Industrie Canada

A GUIDE TO COPYRIGHTS



January 2005

Canada 

CIPO  OPIC

A GUIDE TO COPYRIGHTS



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INTRODUCTION

A poem, painting, musical score, performer's performance, computer program — all these are valuable creations, although perhaps no one can measure their worth. Some may earn a lot of money in the marketplace and others, none at all. Regardless of their merit or commercial value, Canadian law regards all such original creative works to be copyright material. This means that if you own the copyright in a poem, song, or other work, you have a number of rights which are protected under the *Copyright Act*.

Simply put, the Act prohibits others from copying your work without your permission. Its purpose, like that of other pieces of intellectual property legislation, is to protect owners while promoting creativity and the orderly exchange of ideas.

Copyright law has become increasingly complex over the years to respond to a sophisticated communications environment. In this high-tech age, there are many new ways of producing creative works as well as of imitating or exploiting them without the creator's permission. The photocopier, videocassette recorder, and personal computer digital reproduction of songs are just a few examples of modern devices that help artists communicate with their audiences, but that also makes it harder to control unlawful use.

This guide gives some basic information about the intricate subject of copyright. Your original work is worth a great

deal to you. It pays to protect your intellectual property by knowing your rights and how to use them.

Purpose of this guide

In this guide we will look at what a copyright is, how it can benefit you, the advantages of registering your copyright, and how to go about it. Keep in mind that this is general information only and does not cover all the complex issues of copyright law.

For exact definitions and details, consult the *Copyright Act*, the *Copyright Regulations*, and decisions of the courts in specific cases. You can find these texts in many libraries and on Justice Canada's Web site (www.justice.gc.ca). You can also buy a copy of the Act and Regulations in any bookstore selling federal government publications.

Laws enacted by the Government of Canada, decisions and reasons for decisions of federally constituted courts and administrative tribunals are subject to special copyright rules. Anyone may, without charge and without asking permission, reproduce federal laws, decisions and reasons for decisions of federal courts and administrative tribunals. The only condition is that due diligence is exercised in ensuring the accuracy of the material reproduced and the reproduction is not represented as an official version. Electronic copies of federal government acts and regulations (including the *Copyright Act* and *Copyright*

Regulations) are available on Justice Canada's Web site (www.justice.gc.ca).

The Copyright Office

The federal agency responsible for registering copyrights in Canada is the Copyright Office, directed by the Registrar of Copyrights. Registration is official acknowledgement of your copyright claim. It means that the Copyright Office has recorded the details which you provided and gives you a certificate attesting to this fact.

In addition to registering copyrights, the Office maintains the official Register of Copyrights, a record of all registrations of assignments and licences for public use. The Office also provides information to the public about the registration process.

The records of the Copyright Office are open to the public; you may search through them to find information such as who owns a certain copyright and whether ownership has changed. You can now search the copyright registry through our Web site (www.cipo.gc.ca/copyrights), for all copyrights registered after October 1991.

Staff at the Copyright Office does not interpret the *Copyright Act* for you or counsel you in any matters other than registration or the use of Office records. For professional advice, you should consult a lawyer with knowledge in the field.

The Copyright Office is part of the Canadian Intellectual Property Office (CIPO), an agency of Industry Canada. In addition to copyrights, CIPO is responsible for the granting and registration of other forms of intellectual property. These are:

- **patents** — cover new inventions (process, machine, manufacture, composition of matter), or any new and useful improvement of an existing invention;
- **industrial designs** — the visual features of shape, configuration, pattern or ornament (or any combination of these features), applied to a finished article of manufacture;
- **trade-marks** — are words, symbols, designs (or a combination of these), used to distinguish the goods and services of one person or organization from those of others in the marketplace; and
- **integrated circuit topographies** — are the three-dimensional configurations of electronic circuits embodied in integrated circuit products or layout designs.

Visit CIPO's Web site

CIPO's Web site includes useful information about its product lines, services and legislative changes. The five intellectual property guides are available, as are interactive tools that explain intellectual property in an enjoyable way. Visit our Web site at the following address: www.cipo.gc.ca

You may file your application electronically via our Web site and benefit from reduced fees. The information is available at: www.cipo.gc.ca/copyrights

What is a copyright?

In the simplest terms, “copyright” means “the right to copy.” Only the owner of copyright, very often the creator of the work, is allowed to produce or reproduce the work in question or to permit anyone else to do so. Suppose, for example, that you have written a novel. Copyright law rewards and protects your creative endeavour by giving you the sole right to publish or use your work in any number of ways. You may also choose not to publish your work and to prevent anyone else from doing so.

What is covered by copyright?

Copyright applies to all original literary, dramatic, musical and artistic works. Each of these general categories covers a wide range of creations. Here are just a few examples:

- literary works: books, pamphlets, poems and other works consisting of text and computer programs;
- dramatic works: films, videos, plays, screenplays and scripts;
- musical works: compositions that consist of both words and music or music only (note that lyrics without music fall into the literary works category); and
- artistic works: paintings, drawings, maps, photographs, sculptures and architectural works.

The word “original” is key in defining a work that qualifies for copyright protection. Naturally, you cannot obtain a copyright for someone else’s creation.

Originality can be tricky to determine, however, and many court cases revolve around the question of whether a work has been copied, even in part, from somebody else’s work.

Copyright also applies to three other kinds of subject matter in addition to the works listed above:

- performer’s performance: performers such as actors, musicians, dancers and singers have copyrights in their performances;
- communication signals: broadcasters have copyrights in the communications’ signals that are broadcast;
- sound recordings: makers of recordings, such as records, cassettes, and compact discs, which are called “sound recordings” in the *Copyright Act*, are also protected by copyright.

Keep in mind that there is a separate copyright for musical work, for example, a song, and for the device, such as a cassette, that contains the song. Separate protection exists because the song and the sound recording are considered two different works.

Copyright consists of legal rights attached to works and other subject matter. Which legal rights apply to which works or subject matter varies. In general,

copyright means the sole right to produce or reproduce a work or a substantial part of it in any form. It includes the right to perform the work or any substantial part of it, or in the case of a lecture, to deliver it, and if the work is unpublished, it includes the right to publish it or any substantial part of it.

Copyright in an original work also includes the sole right to:

- produce, reproduce, perform or publish any translation of the work;
- convert a dramatic work into a novel or other non-dramatic work;
- convert a novel, a non-dramatic work or an artistic work into a dramatic work by way of performance in public or otherwise;
- make a sound recording of a literary, dramatic or musical work;
- reproduce, adapt and publicly present a cinematographic work;
- communicate the work by telecommunication;
- present an artistic work created after June 7, 1988, at a public exhibition;

- in the case of a computer program that can be reproduced in the ordinary course of its use to rent it out; and
- to authorize any such acts.

Copyright in other subject matter includes the following rights:

- in the case of a performer’s performance which is not fixed, to communicate it by telecommunication and to make a fixation of the performance;
- in the case of a performer’s performance which is fixed with the performer’s authorization, to make a reproduction of that fixation, or to reproduce a fixation that was not authorized by the performer, and to rent out a sound recording of the performance;
- in the case of a sound recording, to publish, to reproduce and to rent out the sound recording;
- in the case of a published sound recording the performer and the maker of the recording have a right to payment of “equitable remuneration” for its performance in public or its communication to the public by telecommunication;
- in the case of a communication signal a broadcaster has the right to

fix the signal, to reproduce any fixation of the signal that was made without the broadcaster’s consent, to authorize another broadcaster to simultaneously retransmit the signal;

- in the case of a television communication signal, to perform the signal in a place open to the public on payment of an entrance fee; and
- to authorize any such acts.

Copyrights vs trade-marks, patents, industrial designs and integrated circuit topographies

People often confuse copyrights with other forms of intellectual property, including trade-marks, patents, industrial designs and integrated circuit topographies.

Trade-marks are used to distinguish the goods or services of one person or company from those of another. Slogans, names of products, distinctive packages or unique product shapes are all examples of features that are eligible for registration as trade-marks. Sometimes, one aspect of a work may be subject to copyright protection and another aspect may be covered by trade-mark law. For example, if you created a new board game, you might enjoy a copyright on the artwork applied to the face of the game board, the rules of the game and a trade-mark for the game’s title.

Patents protect new and useful inventions such as processes, equipment, and manufacturing techniques. They do not cover any artistic or aesthetic qualities of an article. Unlike copyrights, patents can only be obtained by registration.

Industrial designs are protected for their original shape, pattern, ornamentation or configuration (or any combination of these things) applied to a finished manufactured article. The artwork of your game board may be subject to copyright protection. Industrial design protection might be available for the board itself. Industrial design protection, for example, might be available for the shape of a table or the ornamentation on the handle of a spoon. An industrial design may be made by hand or machine. Like patents, industrial designs are obtained only by registration.

Integrated circuit topographies are protected upon registration. An integrated circuit product is a microchip. Protection is for the topography of an integrated circuit product which is a manufactured device made up of a series of layers of semi-conductors, metals, insulators and other materials. The three-dimensional configuration is a “topography.” The original design of the topography is protected.

For more information about these forms of protection, contact:

Canadian Intellectual
Property Office
Client Service Centre
Industry Canada
Place du Portage I
50 Victoria Street
Gatineau QC K1A 0C9
Tel.: (819) 997-1936
Fax: (819) 953-7620

or visit CIPO's Web site:
www.cipo.gc.ca

When copyright does not apply

Titles, names and short word combinations are usually not protected by copyright. A "work" or other "subject matter" for copyright purposes must be something more substantial. However, if a title is original and distinctive, it is protected as part of the work it relates to.

You may have a brilliant idea for a mystery plot but until the script is actually written, or the motion picture produced, there is no copyright protection. In the case of a game, it is not possible to protect the idea of the game, that is, the way the game is played, but the language in which the rules are written would be protected as a literary work. **Copyright is restricted to the expression in a fixed manner (text, recording, drawing) of an idea; it does not extend to the idea itself.**

Other items which are not protected by copyright include:

- names or slogans;
- short phrases and most titles;
- methods, such as a method of teaching or sculpting, etc.;
- plots or characters; and
- factual information.

In the case of a magazine article including factual information, it is the expression of the information that is protected, and not the facts.

Facts, ideas and news are all considered part of the public domain, that is, they are everyone's property.

Note too, that you cannot hold a copyright for a work that is in the public domain. You can adapt or translate such a work and have a copyright for your adaptation or translation.

Infringement

A copyright gives you the sole right to produce or reproduce your work, through publication, performances and so on, or to authorize such activities. Anyone who does such things without your permission is infringing, that is, violating, your rights. Naturally, if you publish, perform or copy anyone else's work without their permission, you are infringing their rights.

One specific form of infringement is plagiarism. This is copying someone else's work and claiming it as your own. An obvious example would be taking a novel that someone else wrote and publishing it under your own name (or pen name). Plagiarism can also entail using a substantial part of someone else's work. An example would be copying a novel, and simply changing the title and names of the characters.

Some activities, if done in private, are not considered infringement. For example, if you give a private performance of someone else's song, or play, in your own home, this would

Copyright applies to:

- a song
- a novel
- a play
- a magazine article
- a computer program

Copyright does not apply to:

- the title for a song
- the idea for a plot
- a method of staging a play
- Hamlet (a work in the public domain)
- the facts in the article
- the name of the program (this might be protected through a trade-mark registration)

not be infringement. Making a copy of a musical tape for private use is not infringement because a royalty payment to the owners of the song rights has been paid when the blank audio tape was purchased. On the other hand, making a copy of a videocassette movie protected by copyright is infringement, even if you only watch it in your own home.

Fair dealing and exceptions

People such as critics, reviewers and researchers often quote works by other authors in articles, books, and so on. Are they infringing copyright? Not

necessarily. The *Copyright Act* provides that any “fair dealing” with a work for purposes of private study or research, or for criticism, review or news reporting is not infringement. However, in the case of criticism, review, or news reporting, the user is required to give the source and the author’s, performer’s, sound recording maker’s or broadcaster’s name, if known.

The line between fair dealing and infringement is a thin one. There are no guidelines that define the number of words or passages that can be used without permission from the author. Only the courts can rule

whether fair dealing or infringement is involved. In addition to fair dealing, the *Copyright Act* has exceptions for different categories of users. One category is non-profit educational institutions. These are permitted to make copies and perform works and other subject matter protected by copyright, free of charge, in the classroom, subject to certain restrictions. Educational institutions are also permitted to make use of works protected by copyright if they are done on the premises of an educational institution for educational or training purposes, provided there are no suitable substitutes available in the commercial marketplace. Educational institutions may copy news and news commentary (excluding documentaries) from radio and television broadcasts and keep the copy for educational use on school premises for up to one year from the date the tape is made. All other types of radio and television broadcasts can be copied by educational institutions and kept for up to 30 days to decide whether the copy will be used for educational purposes. If the copy is used for educational purposes, a royalty set by the Copyright Board must be paid.

Another category of user having exceptions under the *Copyright Act* are “non-profit libraries, archives and museums.” These institutions may copy published and unpublished works protected by copyright in order to maintain and manage their collections. Examples are making a copy for insurance purposes and to

Examples of infringement

Infringement:

- reprinting an article without the copyright owner’s permission;
- playing records at a dance without the copyright owners’ permission;
- giving a public performance of a play without permission;
- photocopying articles for a class of students without permission; and
- taping your favourite band at a music concert without permission.

Not infringement:

- quoting a few lines of the article in a research paper (fair dealing);
- playing records at home;
- giving a public performance of a play by Shakespeare (no copyright exists/public domain);
- obtaining permission from the author and paying a fee to him or her (if requested) in order to use an article; and
- borrowing a musical tape from a friend to copy onto a blank tape for private use (a royalty payment to the owner of the song rights has been paid when the blank tape was purchased).

preserve a rare, original work which is deteriorating.

This can be done as long as copies are not commercially available in a medium that meets the institution's needs. Libraries, archives and museums may copy an entire article of a scholarly, scientific or technical nature provided the copy is used for private study or research purposes. Articles in a newspaper or periodical which are not scholarly, scientific or technical can also be copied if the article is at least 12 months old at the time the copy is made, and provided the copy is used for private study or research purposes.

Another category of user to benefit from exceptions is persons with a "perceptual disability." This term refers to someone who has difficulty reading or hearing. Persons with a perceptual disability, or at the request of a person with a perceptual disability, or for a non-profit organization acting for his or her benefit, to copy a work protected by copyright in alternate formats such as braille, talking books or sign language. The exception applies unless a work in an alternate format is already commercially available.

For a complete list of exceptions to infringement, refer to the *Copyright Act*.

Automatic protection for Canadian and foreign works

When you create a work or other subject matter protected by

copyright, you will automatically have copyright protection provided that, at the time of creation, you were:

- A** a Canadian citizen or a person ordinarily resident in Canada;
- B** a citizen or subject of, or a person ordinarily resident in, a Berne Convention country, a Universal Copyright Convention country, a Rome Convention country (for sound recordings, performer's performance and communication signals only), or a country that is a member of the World Trade Organization (WTO);
- or
- C** a citizen or subject of, or a person ordinarily resident in any country to which the Minister has extended protection by notice in the *Canada Gazette*.

In some cases, you would also obtain automatic copyright if your work was first published in one of the countries included among those who have signed the Berne, Universal Copyright or Rome Conventions or the WTO agreement, even if you were not a citizen or subject of Canada, or of one of those countries.

In short, virtually everyone living in Canada can enjoy the benefits of automatic copyright protection. In addition, Canadians are protected in most foreign countries since most belong to one or more of the international treaties — the Berne Convention or the Universal Copyright Convention, the Rome Convention or are

members of the WTO. Citizens of countries which are members of those conventions enjoy the benefits of Canadian copyright law in Canada. Canada also extends protection to certain non-member countries by way of notice in the *Canada Gazette*.

Sound recordings themselves are protected internationally under the Rome Convention and under the copyright treaties, but there is quite a variation internationally as to the nature of the protection given to sound recordings. In Canada, sound recordings enjoy a broad range of protection under the *Copyright Act*.

Authorship

The author is normally the person who creates the work. See the discussion "Authorship" later in this guide under "Registration of copyright."

Ownership

Generally, if you are the creator of the work, you own the copyright. However, if you create a work in the course of employment, the copyright belongs to your employer unless there is an agreement to the contrary. Similarly, if a person commissions a photograph, portrait, engraving, or print, the person ordering the work for valuable consideration is the first owner of copyright unless there is an agreement to the contrary. The consideration must actually be paid for the copyright to belong to the person commissioning the photograph, portrait, engraving, or print. Also, you may legally transfer

your rights to someone else, in which case, that person owns the copyright.

Duration

Copyright in Canada protects “intellectual” as opposed to “physical” property. One difference between intellectual and physical property is that ownership of physical property, such as a boat or a toaster, is perpetual. One continues to own physical property until it is given away, sold, consumed or destroyed. Ownership of intellectual property, like copyright, is different. Copyright ends at a legally defined point in time. These points in time are set out in rules in the *Copyright Act*. There is one general rule and many special rules that apply to certain kinds of works.

General rule

The **general rule** is that copyright lasts for the life of the author, the remainder of the calendar year in which the author dies, and for 50 years following the end of the calendar year. Therefore, protection will expire on December 31 of the 50th year. After that, the work becomes part of the public domain and anyone can use it. For example, Shakespeare’s plays are part of the public domain; everyone has an equal right to produce or publish them. This rule applies to all categories of works except those to which special rules apply. Some of the more important special rules are listed below.

Photographs

There are three possible terms of copyright protection for a photograph:

- 1** First, where the author is a natural person, the term of protection is the remainder of the calendar year in which the author dies, and for 50 years following the end of the calendar year.
- 2** Second, if the author of the photograph is a corporation in which the majority of voting shares are owned by a natural person who is the author of the photograph (e.g. a commissioned photograph), then the term of copyright protection is the remainder of the calendar year in which the author dies, and for 50 years following the end of the calendar year.
- 3** Third, if the author of the photograph is a corporation in which the majority of voting shares are not owned by a natural person who is the author of the photograph (e.g. a commissioned photograph), then the term of copyright protection is the remainder of the year of the making of the initial negative or plate from which the photograph was derived or, if there is no negative or plate, the remainder of the initial photograph, plus 50 years.

Certain cinematographic works

The duration of protection for cinematographic works which do not have an original arrangement, acting form or combination of incidents (e.g. most home videos) is the remainder of the calendar year of

first publication and for 50 years following the end of that calendar year. However, if the cinematographic work is not published within 50 years following the end of the calendar year of its making, copyright lasts for 50 years following the end of the calendar year of its making. (In other words, a film or video published within 50 years of its making is protected for 50 years from the date of publication. If it was not published within that 50-year period, it is protected for 50 years from the date of making.) These rules apply to all cinematographic works where the arrangement, acting form or combination of incidents do not give the work an original character (i.e. most home videos).

Films and videos which do have an original arrangement, acting form or combination of incidents have always been protected for the life of the author plus 50 years.

Sound recordings

This category includes audio cassettes, CDs, recordings and similar devices. Copyright lasts for 50 years after the end of the calendar year of the first fixation of the sound recording.

Performer’s performance

Copyright lasts for 50 years after the end of the calendar year in which the performance is first fixed or, if it is not fixed, 50 years after it is performed.

Communication signals

Copyright lasts for 50 years after the end of the calendar year in

which the signal was broadcast.

Works of Crown copyright

These are works created for or published by the Crown, i.e., government publications. Copyright in these works lasts for the remainder of the calendar year in which the work was first published, and for 50 years after that. Copyright is perpetual until the work is published. Laws enacted by the Government of Canada, decisions and reasons for decisions of federally constituted courts and administrative tribunals are subject to special copyright rules. Anyone may, without charge and without asking permission, reproduce federal laws, decisions and reasons for decisions of federal courts and administrative tribunals. The only condition is that due diligence is exercised in ensuring the accuracy of the material reproduced and the reproduction is not represented as an official version.

For additional information please refer to Justice Canada's Web site (www.justice.gc.ca). Permission to use works owned by the Crown may be obtained from:

Crown Copyright Officer
Canadian Government
Publishing
Public Works and Government
Services Canada
Ottawa ON K1A 0S9
Tel.: (613) 996-6886
Fax: (613) 998-1450
E-mail: copyright.droitdauteur@pwgsc.gc.ca

Joint authorship

In the case of a work which has more than one author, the term will be measured using the life of the author who dies last and 50 years following the end of that calendar year.

Unknown author

In the case of a work where the identity of the author is unknown, but the work is protected for the life of the author, the copyright subsists for whichever of the following terms ends earlier:

- 1** the remainder of the calendar year of the first publication of the work and a period of 50 years after that; or
- 2** the remainder of the calendar year of the making of the work and 75 years after that.

Posthumous works

These are works which have not been published (or for certain types of works which have not been published or performed or delivered in public) during the lifetime of the author.

The duration of the copyright in these works depends upon the date of creation of the work. If the work was created **after** July 25, 1997, the term of copyright protection is the life of the author, the remainder of the calendar year in which the author dies, and for 50 years following the end of the calendar year.

If the work was created **before** July 25, 1997, then three different scenarios can exist:

- 1** First, the author dies, the work is published, performed or

delivered prior to July 25, 1997, the copyright lasts for the remainder of the calendar year in which the work was first published, performed or delivered and for 50 years after that.

- 2** Second, the author dies during the 50 years immediately before July 25, 1997, and the work has not been published, performed or delivered on July 25, 1997, the copyright lasts until December 31, 1997 (for the remainder of the calendar year in which Bill C-32 comes into force and for 50 years following the end of that calendar year).
- 3** Third, the author died more than 50 years immediately before July 25, 1997, and the work has not been published, performed or delivered on July 25, 1997, the copyright lasts until December 31, 1997 (for the remainder of the calendar year in which Bill C-32 comes into force and for five years following the end of that calendar year).

Moral rights

Even if you sell your copyright to someone else, you still retain what are called “moral rights.”

This means that no one, including the person who owns the copyright, is allowed to distort, mutilate or otherwise modify your work in a way that is prejudicial to your honour or reputation. Your name must also be associated with the work as its author, if reasonable in the circumstances. In addition, your work may not be used in association with a product, service, cause or institution in a way that is prejudicial to your honour or reputation without your permission.

Following are some situations which may infringe the author’s moral rights.

Example 1: You’ve sold the copyright of a song to a certain publisher who converts your music into a commercial jingle without your permission.

Example 2: You’ve sold the copyright for your novel to a publisher who decides to give it a happy ending, instead of the tragedy you wrote.

You cannot sell or transfer your moral rights to anyone else, but you can waive them when you sell or transfer your copyright at a later date. A contract of sale or transfer may include a waiver clause. Moral rights exist for the same length of time as copyright, that is, usually for the lifetime of the author plus 50 years more, and passed to the heirs of the author, even if they do not inherit ownership of the copyright itself.

REGISTRATION OF COPYRIGHT

The benefits

You do not have to register your copyright to have protection in Canada, but when you register with the Copyright Office, you receive a certificate which can be used to your advantage in the event that your work is infringed.

A certificate of registration is evidence that your work is protected by copyright and that you, the person registered, are the owner. In the event of a legal dispute, you do not have to prove ownership; the onus is on your opponent to disprove it.

However, registration is no guarantee against infringement. You have to take legal action on your own if you believe your rights have been violated. Also, registration is no guarantee that your claim of ownership will eventually be recognized as legitimate. Note too, that the Copyright Office does not check to ensure that your work is indeed original, as you claim. Verification of your claim can only be done through a court of law.

How to register

You register a copyright by completing an application and sending it to the Copyright Office, along with the appropriate fee. A form and detailed instructions for completing it as well as the current fee schedule are included with the information in this guide.

Please do not send a copy of your work along with the application. The Copyright Office does not review or assess works in any way, nor does the Office check to see whether the title of your work has already been used. Many works may appear with the same title, but if each work has been created independently, each will have its own copyright protection.

Please note, however, that you may need to send copies of your work to the National Library of Canada. Under the *National Library Act*, two copies of every book published in Canada, and one copy of every sound recording manufactured in Canada that has some Canadian content must be sent to the National Library within one week of publication. (Your publisher may have already made these arrangements.) For more information on this, contact:

National Library of Canada
Legal Deposit
395 Wellington Street
Ottawa ON K1A 0N4
Tel.: (819) 997-9565
Fax: (819) 953-8508
E-mail: legal.deposit@lac-bac.gc.ca

When your application is received in the Copyright Office, it is reviewed to make sure you have filled it out properly. If necessary, suggestions for changes are made, the relevant information is entered into a computerized databank and a registration certificate is issued.

Once a registration has been issued, the Copyright Office has

the authority to make small corrections, such as the removal of clerical errors made in preparing an application or a registration document. However, only the Federal Court of Canada can authorize substantial changes.

Authorship

Since duration of a copyright is usually based on an author's lifetime, it is important for the Copyright Office to know the author's name.

If you are the creator of a work (e.g. writer, artist, composer, or playwright) you are considered its author. In most cases, therefore, you should insert your name and address in the relevant section of the copyright application. If the work was created by an employee of yours, the employee's name should appear on the form as author (even though you own the copyright). If there are two authors of the same work, give the names and addresses of both. If there are many contributing authors, all their names and addresses should be given. However, if the work was created by many people under the direction of an editor-in-chief, that person's name may be given as author.

The author of most types of works is the individual who created the work. For all works normally protected for the life of the author plus 50 years, the author must be an individual as opposed to a corporation.

However, for certain types of works, e.g., photographs, certain cinematographic works, there are special rules defining who the author is. For these types of works, the author may be either an individual or a corporation.

- The author of a **photograph** is the person who owned the negative or original photograph (if there was no negative, as in Polaroid or electronic photography) at the time it was made.
- For **cinematographic works** made prior to January 1, 1994, which do not have an original arrangement, acting form or combination of incidents (e.g. most home videos) the author is the person who owned the negative or original videotape at the time it was made. For other cinematographic works made before or after January 1, 1994, there is no special rule and the author is simply the person who created the work.
- For **sound recordings** made prior to January 1, 1994, the owner is the person who owned the master tape or original recording at the time it was made. The maker of a sound recording made on or after January 1, 1994, is the person by whom the arrangements necessary for the making of the sound recording were undertaken.

- For a **performer's performance** made on or after January 1, 1994, there is no special rule defining who is the owner. The owner is simply the person who created the work.

- For **communication signals** made on or after September 1, 1997, there is no special rule and the owner is simply the broadcaster who broadcasts the work.

When deciding who the author of a work is, you must use the rule which applied at the time the work was created, regardless of when the work is registered.

An application (accompanied by the prescribed fee) must contain the following information:

- A** The name and a complete address of the owner of the copyright: some authors prefer to use pen names, rather than their real names, on their published works. You may include your pen name on your application for registration, but you must also give your full legal name. This is necessary because, without your legal name, it would be difficult to determine the full duration of the copyright, i.e., your lifetime plus 50 years.
- B** A declaration that the applicant is one of the following: the author of the work; the owner of the copyright in the work; an assignee of the copyright; or a person to whom an interest in the copyright has been granted by licence.

- C** The category of the work: you will have to indicate for an application for registration of a copyright, which category or categories best describe your work, e.g., literary, artistic, musical, dramatic.

For an application for registration of a copyright in other subject matter, you must indicate either a sound recording, a performer's performance, or communication signals. For more information on these categories, consult the instruction sheet provided with the application form.

- D** The title of the work.
- E** The name of the author, and if the author is deceased, the date of the author's death, if known.
- F** In the case of a published work, the date and place of first publication. A work is considered published when copies of it have been made available to the public. Also, the construction of an architectural work and the incorporation of an artistic work into an architectural work constitute publication. The following do not constitute publication: the performance in public of a literary, dramatic or musical work, the delivery in public of a lecture, the communication of a work to the public by telecommunication, or the exhibition in public of an artistic work.
- G** In the case of an application to register the copyright in a sound recording, the date of first fixation of the recording must be specified.

H In the case of an application to register the copyright in a performer's performance you will have to specify the date of its first fixation in a sound recording, or if it is not fixed in a sound recording, its first performance.

I In the case of an application to register the copyright in a communication signal you will have to specify the date of its broadcast.

Length of the registration process

The registration process takes three weeks if the Copyright Office staff reviews your application and accepts it without further questions. If amendments are required, the processing time may be longer. Registration occurs once any amendments have been made and the application is accepted. The Office then issues a certificate of registration.

Registration fees

You must pay a prescribed fee when applying for registration of copyright. That fee covers the review of your application and, if it is acceptable, a registration certificate will be issued. If your application has been found in need, a report will be sent to you. A response to this report will be required within 60 days from the date of the letter; otherwise the application will be abandoned without possibility of a refund.

Send your payment with your completed application form. Payment may be made by VISA, MasterCard, American Express,

deposit account, postal money order or cheque made out to the Receiver General for Canada. Payment must be in Canadian dollars or in currency equivalent to the fees in Canadian dollars.

It is also possible to submit an application through electronic commerce. The information is available on CIPO's Web site (www.cipo.gc.ca/copyrights).

An application form and detailed instructions for completing it as well as the current fee schedule are included in this guide.

Foreign applicants should pay by money order payable in Canadian funds.

Registration is valid for as long as the copyright for the work exists. Once you register your copyright, you do not have to pay any additional fees to maintain or renew it. If you register the copyright of an unpublished work, you do not have to register again after publication.

What the registration covers

Normally, each song, book, recording, etc., is considered a separate work and requires a separate application and fee. There is no blanket-type registration for several works by one author. However, if you are registering a book of poems, songs, photographs, etc., you may register the book as one work. Also, note that if the work is published in a series of parts such as an encyclopedia, one registration covers all the parts in the series.

Indicating copyright

There is no requirement to mark your work under the *Copyright Act*. The Universal Copyright Convention provides for marking with the symbol ©, the name of the copyright owner and the year of first publication, for example, © Jane Doe, 1986. Although not obligatory in Canada, such marking can serve as a reminder to others of a copyright as well as providing the name of the owner. Some countries that are members of the Universal Copyright Convention, but not of the Berne Convention require such marking. You may use this notice even if you have not registered your work.

Policing your copyright

The Copyright Office is not responsible for ensuring that your copyright is not being infringed. This is your responsibility. Suppose a person publishes a novel very much like yours, simply disguising the plagiarism with a few name changes. It is up to you to launch legal action. Then, it will be up to the courts to decide whether, indeed, you have been wronged. However, the *Copyright Act* does contain criminal remedies which apply to certain types of serious infringement or piracy.

ADDITIONAL INFORMATION

Agreements: assignments and licences

As the owner of a copyright, you may confer your rights to produce or reproduce a creative work to other people through a legal agreement. There are many kinds of agreements, with the main types being assignments and licences.

An **assignment** occurs when you transfer part, or all, of your rights to another party. The assignment may be for the whole term of the copyright, or for a certain part of it. In this case, you have given up your rights for a certain part of the copyright, or for the whole term of the copyright. You do not have to register your assignment with the Copyright Office, but it is wise to do so. Suppose the original copyright owner does assign the same rights to two separate parties for the same work. If one party does not register its assignment, the assignment that was registered will be considered the valid one.

A **licence** gives someone else permission to use your work for certain purposes and under certain conditions, but you still retain ownership. You have not given up your rights.

To be valid, an assignment or licence must be in writing and signed by you, the owner.

Assignments and licences which are considered “grants of interest” in a copyright, may be registered with the Copyright Office. All you have to do is send a certified copy of the

original agreement along with the prescribed fee. Registration takes about three weeks. The Copyright Office will retain a copy of the documentation and return your original documentation along with a certificate of registration.

Royalties and tariffs

Royalties are sums paid to copyright owners as commission for sales of their works or permission to use them. For example, a musician is entitled to a royalty every time a radio station publicly plays his or her record. You do not have to pay royalties for private performance, such as playing music in your home. But you do if you are holding a dance or concert, since this is considered a public performance. In many cases, the concert hall, hotel, or other facility will have already made the necessary arrangements for paying royalties.

Tariffs are set fees that users must pay for using certain copyright material. For example, cable companies pay tariffs for permission to transmit programs. Both tariffs and royalties account for many business transactions every day. To help regulate this complex and growing sector of the economy, the Canadian government has set up a public tribunal known as the Copyright Board. This Board has a number of responsibilities under the *Copyright Act*, such as:

- reviewing and approving fees set by the Canadian performing rights society, SOCAN (Society of Composers,

Authors and Music Publishers of Canada);

- setting tariffs for cable retransmission;
- arbitrating tariffs if there is a disagreement between a licensing body and another party;
- reviewing and approving fees for the public performance and telecommunication to the public of sound recordings. These fees are paid by broadcasters and other public users of music to the makers of sound recordings and the performers whose performances are recorded on those sound recordings;
- setting the amount of a levy on all blank audio recording media such as blank tapes and cassettes which are made or imported, and sold in Canada. The proceeds from this levy are paid to eligible composers, lyricists, performers and makers of sound recordings through their professional associations or collectives;
- setting royalties for the reproduction and performance of radio and television programs by educational institutions;
- granting licences for the use of published works in certain cases. For example, if you wanted to use a published work, but could not locate the author, you could apply to the Copyright Board for permission. You would most

likely have to pay a fee which would be kept by the Board on behalf of the owner, should that person eventually be located.

For more information contact:
Copyright Board of Canada
56 Sparks Street, Suite 800
Ottawa ON K1A 0C9
Tel.: (613) 952-8621
Fax: (613) 952-8630
Web site: www.cb-cda.gc.ca

Collectives

Sometimes people find it inconvenient or difficult to administer the rights they hold through the copyright system. In such cases, they might choose to join a collective, that is, an organization that collects royalties on behalf of its members. Collectives, known as “collective societies” in the *Copyright Act*, grant permission to people to use works owned by their members and determine the conditions under which those works can be used. The organization may also launch a civil suit on behalf of one of its members in the case of copyright infringement.

There is a wide range of collectives covering such areas as television and radio broadcasts, sound recordings, reprography (photocopying), performances, video recordings and visual arts.

One example is a reprography collective called ACCESS COPYRIGHT (Canadian Copyright Licensing Agency) that grants licences to photocopy or digitally reproduce copyright-

protected works and collects and distributes fees on behalf of its members. Suppose you are the owner of the copyright on a book on the history of Canada: membership in the collective allows it to grant permission to teachers, for example, to copy chapters of your book and collect fees on your behalf.

Remember that you may not make photocopies of material protected by copyright (other than for purposes of fair dealing) without permission, nor may a library do this for you. To seek permission, contact the owner or, ACCESS COPYRIGHT, if the owner is a member.

In Ontario:
ACCESS COPYRIGHT
1 Yonge Street
Suite 1900
Toronto ON M5E 1E5
Tel.: (416) 868-1620 ext. 228 or
1 800 893-5777
Fax: (416) 868-1621
E-mail:
info@accesscopyright.ca

In Quebec:
COPIBEC
1290 Saint-Denis Street
7th floor
Montréal QC H2X 3V7
Tel: (514) 288-1664
1 800 717-2022
Fax: (514) 288-1669
E-mail: info@copibec.qc.ca

You may obtain a list of some other Canadian collectives through the Copyright Office or the Copyright Board.

Performing rights societies

A performing rights society is a collective that deals with musical works, collecting royalties on behalf of composers, lyricists, songwriters and music publishers for the public performance or broadcasting of their music.

There is currently only one such organization in Canada, SOCAN (Society of Composers, Authors and Music Publishers of Canada).

SOCAN
41 Valleybrook Drive
Don Mills ON M5B 2S6
Tel.: (416) 445-8700 or
1 800 557-6226
Fax: (416) 445-7108
E-mail: socan@socan.ca
Web site: www.socan.ca

Government publications

Government publications are usually protected by Crown Copyright. You may seek permission to use or reproduce government works by writing to:

Crown Copyright Officer
Canadian Government
Publishing
Public Works and Government
Services Canada
Ottawa ON K1A 0S9
Tel.: (613) 996-6886
Fax: (613) 998-1450
E-mail: copyright.droitdauteur@pwgsc.gc.ca

For more information

Staff at the Copyright Office will be pleased to assist you with general questions about copyright and the registration process. Address your correspondence to:

Copyright Office
Canadian Intellectual
Property Office
Industry Canada
Place du Portage I
Room C-229
50 Victoria Street
Gatineau QC K1A 0C9

Or visit CIPO's Web site (www.cipo.gc.ca).

You may also telephone for general information and application forms at (819) 997-1936 between 8:30 a.m. and 4:30 p.m., Eastern time, Monday through Friday, except on legal holidays.

Any correspondence addressed to the Copyright Office at CIPO Headquarters in Gatineau and delivered:

- 1** during business hours to CIPO Headquarters, will be accorded the date of receipt that day;
- 2** during business hours to Industry Canada Headquarters or to one of its regional offices, will be accorded the date of receipt in that office*;
- 3** at any time electronically, including by facsimile, will be considered to be received on the day that it is transmitted, if received before midnight, local time, at CIPO Headquarters*;

- 4** through the Registered Mail Service of the Canada Post Corporation (CPC), will be accorded the date stamped on the envelope by CPC*.

*Only if it is also a day on which CIPO Headquarters in Gatineau is open, if not, it will be considered received on the next working day.

For information about a particular application, call (819) 997-1936 and quote your file number. Please do not call the office to find out the status of a new application until at least four weeks after sending it.

Other information circulars

For more detailed information on various aspects of copyright, you may wish to consult the following circulars:

- 1** Copyright protection for computer programs;
- 2** Musical works, sound recordings and performer's performances;
- 3** Protection for games;
- 4** Performing rights societies and other copyright collectives;
- 5** Rectifications of the Copyright Register;
- 6** Authorship;
- 7** Describing the category of a work or other subject matter;
- 8** Unprotected items: ideas, titles, names and slogans;
- 9** Neighbouring rights;
- 10** Parallel importation of books;

- 11** Photographs;
- 12** Exceptions for educational institutions;
- 13** Exceptions for libraries, museums and archives;
- 14** Exceptions for persons with a perceptual disability;
- 15** Private copying; and
- 16** Useful contacts.

All of these information circulars are available through the Copyright Office or on CIPO's Web site (www.cipo.gc.ca/copyrights). Additional circulars may be added from time to time.

APPENDIX A — TWENTY COMMON QUESTIONS ABOUT COPYRIGHT

Q1 What is a copyright?

A Copyright is the exclusive right to copy a creative work or allow someone else to do so. It includes the sole right to publish, produce or reproduce, to perform in public, to communicate a work to the public by telecommunication, to translate a work, and in some cases, to rent the work.

Q2 To what does copyright apply?

A Copyright applies to all original literary, dramatic, musical and artistic works. These include books, other writings, music, sculptures, paintings, photographs, films, plays, television and radio programs, and computer programs. Copyright also applies to other subject matter which includes sound recordings (such as records, cassettes, and tapes), performer's performances and communication signals.

Q3 What is not protected by copyright?

A Themes, ideas, most titles, names, catch-phrases and other short-word combinations of no real substance.

Q4 Who owns the copyright?

A Generally, the owner of the copyright is:
a) the creator of the work;
b) the employer, if the work was created in the course of employment unless there is an agreement to the contrary;
c) the person who commissions a photograph, portrait, engraving

or print for valuable consideration (which has been paid) unless there is an agreement to the contrary; or
d) some other party, if the original owner has transferred the rights.

Q5 How do I obtain copyright?

A You acquire copyright automatically when you create an original work or other subject matter.

Q6 Do I have to do anything to be protected?

A No. Since you obtain copyright automatically, you are automatically protected by law. However, it is still a good idea to register your copyright and to indicate notice of copyright on your works.

Q7 What are the benefits of copyright registration?

A Registration gives you a certificate that states you are the copyright owner. You can use this certificate in court to establish ownership. (The onus is on your opponent to prove that you do not own the copyright.)

Q8 How do I register a copyright?

A You file an application with the Copyright Office along with a prescribed fee. An application form and instructions for filling it out are available from the Copyright Office or by visiting CIPO's Web site (www.cipo.gc.ca). Electronic commerce is also possible via our Web site.

The registration process normally takes three weeks. The fee covers review of your application, registration and your official certificate.

Q9 Once I have registered, do I have to pay further fees to maintain my copyright?

A No. The registration fee is a one-time expense.

Q10 How long does copyright last?

A Generally, copyright in Canada exists for the life of the author plus 50 years following death. There are some exceptions.

COPYRIGHT PROTECTION ALWAYS EXPIRES DECEMBER 31 OF THE LAST CALENDAR YEAR OF PROTECTION.

Q11 Does the Copyright Office check to ensure that my claim of copyright is legitimate?

A No, the Office does not verify ownership. Only the courts can do that.

Q12 Do I need to mark my work with a notice of copyright?

A This isn't necessary to be protected in Canada, however, you must mark your work with the symbol ©, the name of the copyright owner and the year of first publication to be protected in some other countries. Even though it is not always required, marking is useful since it serves as a general reminder to everyone

that the work is protected by copyright.

Q13 Is the copyright of a Canadian author valid in foreign countries?

A Yes, as long as the country in question belongs to one or more of the international copyright treaties, conventions or organizations. These include the Berne Convention, the Universal Copyright Convention, the Rome Convention, and the World Trade Organization (WTO). These international conventions, treaties and organizations include most countries in the world.

Q14 Is the copyright of a foreign author valid in Canada?

A Yes. Please refer to the section entitled “Automatic Protection for Canadian and foreign works.”

Q15 Should I send copies of my work with my application?

A No, the Copyright Office does not accept copies of a work.

Q16 What is the difference between an assignment and a licence?

A An assignment is a transfer of ownership of the copyright from one party to another. A licence is a contract which, for specific purposes, allows someone to use a work temporarily.

Q17 What is copyright infringement?

A Unlawful use of copyright material. Plagiarism — passing off someone else’s work as your own — is a form of infringement.

Q18 What is “fair dealing”?

A Use or reproduction of a work for private study, research, criticism, review or news reporting.

Q19 Will the Copyright Office prevent others from infringing my rights?

A No. The responsibility for policing your copyright rests with you.

Q20 Can libraries or educational institutions make multiple copies of parts of books or articles for student use?

A No. The making of multiple copies requires the consent of the copyright owner. This consent may be obtained through a licensing agreement with a photocopying collective. However, the *Copyright Act* does allow the copying by individuals of parts of works for private study or research. Such copying should be minimal. This exception falls within the “fair dealing” section of the Act.

Access Copyright

A reprography collective that grants licences to photocopy works and collects fees on behalf of its members.

Artistic work

Visual representation such as a painting, drawing, map, photograph, sculpture, engraving or architectural plan.

Assignment

Transfer of copyright from the original owner to another party.

Author

The creator of an artistic, literary, musical or dramatic work.

Berne Convention Country

A country that is party to the Convention for the Protection of Literary and Artistic Works concluded at Berne on September 9, 1886, or any one of its revisions, including the *Paris Act* of 1971.

Canadian Intellectual Property Office (CIPO)

Federal agency responsible for the administration of intellectual property laws (includes Copyright Office).

Collective

Organization that administers rights granted by the copyright system on behalf of copyright owners who have joined that collective.

Copyright

Provides protection for literary, artistic, dramatic or musical works (including computer programs), and three other subject matter known as: performer's performance, sound recording and communication signal.

Copyright Act

Federal legislation governing copyright in Canada.

Copyright Board of Canada

A tribunal that reviews and must approve all tariffs and fees proposed by collectives such as SOCAN, the Canadian performing rights society. The Board can also set royalties when asked to do so by either a collective or a user of a collective's repertoire. The Board also grants licences for use of works when the copyright owner cannot be located.

Copyright infringement

Violation of copyright through unauthorized copying or use of a work or other subject matter under copyright.

Copyright Office

The federal government office responsible for registering copyrights and agreements affecting a copyright in Canada.

Crown copyright

Copyright in works prepared for or published by the government, i.e., government publications.

Dramatic work

Includes plays, screenplays, scripts, films, videos and choreographic works and translations of such works.

Exception

A provision in a copyright law permitting the use of a work by defined user groups without the consent of its creator and without the payment of royalties which use would otherwise be an infringement of copyright. Examples of user groups benefiting from exceptions are educational institutions, libraries, museums, archives and persons

with a perceptual disability.

Fair dealing

Use of works for purposes of private study, research, criticism, review or news reporting that is not considered to constitute infringement of copyright.

Industrial designs

The visual features of shape, configuration, pattern or ornament (or any combination of these features), applied to a finished article of manufacture.

Integrated circuit topographies

Three-dimensional configurations of electronic circuits embodied in integrated circuit products or layout designs.

Intellectual property

A form of creative endeavour that can be protected through a copyright, trade-mark, patent, industrial design or integrated circuit topography.

Licence

Legal agreement granting someone permission to use a work for certain purposes or under certain conditions. A licence does not constitute a change in ownership of the copyright.

Literary work

Work consisting of text which includes novels, poems, song lyrics without music, catalogues, reports, tables and translations of such works. It also includes computer programs.

Marking

Indicating copyright with the symbol ©, the name of the copyright owner and the year of first publication.

Moral rights

Rights an author retains over the

integrity of a work and the right to be named as its author even after sale or transfer of the copyright.

Musical work

Work which consists of music plus lyrics or music only.

Patents

Cover new inventions (process, machine, manufacture, composition of matter), or any new and useful improvement of an existing invention.

Pen name or nom de plume

A name used by the writer instead of his or her real name.

Performers and producers rights

A term used to indicate rights of performers and sound recording producers to be remunerated when their performances and sound recordings are performed publicly or broadcast, also referred to as “neighbouring rights.”

Performing rights society

An organization that administers rights to perform musical works on behalf of composers, lyricists, songwriters and music publishers (see SOCAN).

Plagiarism

Using the work (or part of it) of another person and claiming it as your own.

Private copying

Copying of pre-recorded musical works, performer’s performances and sound recordings onto a blank medium, such as audio tape or cassette, for personal use.

Private copying levy

An amount of money established by the Copyright Board on blank recording media made or imported and sold in Canada, payable by manufacturers and importers with the money collected being redistributed to eligible composers, lyricists, performers and sound recording makers through their professional associations or collectives.

Posthumous work

A work which is published for the first time (or for certain types of works, published or performed or delivered in public for the first time) after the author’s death.

Publication

Making copies of a work available to the public. The construction of an architectural work and the incorporation of an artistic work into an architectural work are considered publication.

Registration

The formal record of a copyright by the Copyright Office.

Rome Convention Country

A country that is party to the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations adopted on October 26, 1961, in Rome.

Royalty

A sum paid to copyright owners for the sale or use of their works or other subject matter.

Sound recording

A device which reproduces sounds, such as a cassette, record or CD player.

SOCAN

The Society of Composers, Authors and Music Publishers of Canada. SOCAN is the only performing rights society in Canada.

Tariff

A standard charge for use of copyrighted works. Usually applies to fees paid by users of musical works and cable companies for the rebroadcast of programs.

Trade-marks

Words, symbols, designs (or a combination of these), used to distinguish the goods and services of one person or organization from those of others in the marketplace.

Universal Copyright Convention Country

A country that is party to the Universal Copyright Convention, adopted on September 6, 1952, in Geneva, Switzerland, or to that Convention as revised in Paris, France, on July 24, 1971.

WTO Member Country

A country that is a Member of the World Trade Organization as defined in subsection 2(1) of the *World Trade Organization Agreement Implementation Act*.

TARIFF OF FEES

Tariff of Fees

(Subsection 5(2), paragraph 6(2)(b) and section 7 and 9)

1 Accepting an application for registration of a copyright

(a) pursuant to section 55 of the Act

(i) where the application and fee are submitted on-line to the Copyright Office, via the Canadian Intellectual Property Office Web site.....\$50

(ii) in any other case.....\$65

(b) pursuant to section 56 of the Act

(i) where the application and fee are submitted on-line to the Copyright Office, via the Canadian Intellectual Property Office Web site.....\$50

(ii) in any other case.....\$65

2 Accepting for registration an assignment or licence of a copyright pursuant to section 57 of the Act.....\$65

3 Processing a request for accelerated action on an application for registration of a copyright or for registration of an assignment, licence or other document.....\$65

4 Correcting a clerical error in any instrument of record including, without further fee, issuing a corrected certificate of registration of copyright, pursuant to section 61 of the Act, or processing a request to include in the Register of Copyrights any other document affecting a copyright

(a) where the request and fee are submitted on-line to the Copyright Office, via the Canadian Intellectual Property Office Web site.....\$50

(b) in any other case.....\$65

5 Providing a certified copy in paper form of a document

(a) for each certification.....\$35

(b) plus, for each page.....\$1

6 Providing a copy in paper form of a document, for each page

(a) where the user of the service makes the copy using Copyright Office equipment.....\$0.50

(b) where the Copyright Office makes the copy.....\$1