

COPYRIGHT PROTECTION IN CANADA

What is Copyright?

In Canada, copyright traditionally restricts the right to reproduce, perform, publish, translate, record, broadcast, rent and otherwise distribute original literary, artistic, musical and dramatic works that have been fixed in some material form. Copyright also includes a broad range of ancillary rights from moral rights to “neighbouring rights”, the latter of which includes performance rights and broadcast rights.

Who is an Author for a Work?

Generally, the author is the person who actually wrote, drew or composed the work. Where it is not clear, the author will be the person or persons who exercised the skill and judgment that resulted in the expression of the work in material form. An interest in copyright is not granted for the conception of an idea that merely inspired a work.

Who Owns Copyright?

In the absence of any agreement to the contrary, the general rule is the author of a work is the first owner of copyright in that work.

The most common exceptions to the above are:

- *works made in the course of employment* in which the first owner is the employer;
- *works created by or for the Crown* in which case the first owner is “Her Majesty”; and

- *performer’s performances, sound recordings and communication signals* in which case the first owner is the performer of the performance, the “maker” of the sound recording and the broadcaster of the communication signal, respectively.

What are Moral Rights?

Moral rights are exclusive to the *author* of a literary, artistic, musical or dramatic work. Unless waived, moral rights can be protected by the author until copyright expires even if the author is not (or no longer) the owner of copyright in the work.

Moral rights cannot be sold or assigned. They can only be waived. Moral rights include:

- the right to the integrity of a work, including the right to protect a work from:
 - ♦ distortion, mutilation or modification; or
 - ♦ being used in association with a product, service, cause or institution *to the prejudice of the honour or reputation of the author*; and
- the right to be associated with a work as its author (by name or pseudonym), *where reasonable in the circumstances*, or to remain anonymous.

Should Copyright be Registered?

Unlike trademarks and patents, copyright arises automatically by operation of law in

most countries without any requirement for local registrations or sales.

In Canada, copyright arises whenever:

- a new work is created by an author who is a citizen or resident of Canada;
- a new work is created by an author who is a citizen or resident of any other country that is a member of the WTO or participates in either the Berne Convention or the Universal Copyright Convention; or
- a new work is first published in Canada.

Registration of copyright is available in Canada, but is not required. In Canada, a registration grants the registrant a legal presumption that it is the exclusive owner of copyright in the work. This presumption can be especially helpful in protecting copyright when a dispute subsequently arises. In the United States, a prior copyright registration may be required to claim certain legal remedies for infringement.

When does Copyright Expire?

In Canada, the general rule is that copyright expires 50 years after the death of the author. After expiration of copyright, a work is considered part of the public domain and may be copied and distributed in Canada without restrictions. The term can vary in other countries.

In addition, copyright cannot be enforced in Canada in an artistic work that is used in the manufacture of a *useful article* after more than 50 copies are created. Instead, an industrial design registration must be sought within one year after public disclosure to

preserve any exclusive rights in the designs for such articles. Industrial designs are intended to include useful articles like furniture, wallpaper, carpets, motor vehicles, clothing, etc.

Are there Exemptions?

The “fair dealing exemption” is the exemption most commonly relied upon in Canada to override the exclusive rights of the copyright owner. However, it is fairly restrictive. It is broadly available for only the following purposes:

- private research and personal study;
- criticism and reviews; and
- news reporting.

When distributing copies or excerpts from a work, the source and, where possible, the name of the author must be identified.

Such dealing with a work must also be considered “fair” having regard to, among other factors, the number of copies, and the manner of distribution, the availability of the original work as well as the size and quality of the copied portions. As there is no “bright line” test for determining fairness, we recommend that legal advice be sought in advance.

There are several other exemptions that are available for a variety of specific purposes, such as education and archiving. However, it is again recommended that legal advice be sought before relying on these exemptions as they are very narrow in scope.

Can Copyright be Sold or Licensed?

Yes, copyright and related registrations can be sold or licensed in Canada by way of

written agreement. In the absence of a written agreement, the courts may also recognize a limited non-proprietary or implied license in appropriate circumstances. However, written agreements prepared with the assistance of legal counsel are strongly recommended.

In Canada, copyright can be assigned or licensed wholly or partially and subject to an unlimited variety of limitations as to territory, term and means of distribution. In some circumstances, an exclusive licensee may acquire a proprietary interest in copyright for a work.

Where Can I Get More Information?

You can get more information by visiting the web sites for:

Canadian Intellectual Property Office
www.cipo.ic.gc.ca

United States Copyright Office
www.copyright.gov

Or by contacting:

BLAZE IP
McMaster Innovation Park
175 Longwood Road South, Suite 102
Hamilton, Ontario L8P 0A1

T: 905-572-9300

www.blaze-ip.ca