

# **Demystifying Copyright**

A Guide to Canadian Copyright Basics for Writers,  
Performers, Musicians and Artists

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**PBSC at the Faculty of Law, University of New Brunswick regrets that it cannot provide legal advice. This document contains general discussion of certain legal and related issues only. Please consult with a lawyer for assistance with specific legal problems.**

## **“I have copyright? Is it contagious?!”**

### **General Info on Copyright**

#### **What is copyright?**

Copyright is literally a right to copy and gives you, as the creator of a work, the exclusive rights to exploit your work for a specific amount of time. Exploiting the work means you can make money from it by

- selling copies of it,
- selling the rights for related works (such as the film rights to a novel) or,
- distributing it.

#### **How do I get it?**

You have copyright in your work provided it is

- Original**- As soon as you write something, draw something, or paint something you have copyright providing that it is your original work. You must not copy from anyone and you must have exercised some skill, knowledge, or labour in its creation.
- In a Fixed Form**- Your work must also be in a fixed form such as a story written on paper or a recording of you playing your song. The only exception is for live performances (see Performers, below). If it does not exist in some physical form it is just an idea and ideas are not protected by copyright.

#### **Do I need to register my copyright?**

No, you do not need to take any action in order to get copyright in your work. While it is also unnecessary for you to add the copyright symbol (©) to your work, it may be useful for you to do so to help prevent infringement by those who believe that you need the symbol to get the copyright.

#### **Where can I register my copyright?**

You may register your copyright at the copyright office in Gatineau, Quebec. You may apply online at their website, [http://strategis.ic.gc.ca/sc\\_mrksv/cipo/cp/cp\\_main-e.html](http://strategis.ic.gc.ca/sc_mrksv/cipo/cp/cp_main-e.html), but remember that *your work is protected by copyright even if you do not register*.

#### **What is the Copyright Act?**

This is the statute (the written law) that covers all copyright in Canada. You can view the *Copyright Act* on the Government of Canada's website at <http://laws.justice.gc.ca/en/C-42/>.

### **What are moral rights?**

Moral rights are related to the integrity of your work. It is a legal right separate from copyright that prevents others, even those who have purchased the work, from altering or using it in a way that would hurt your reputation as its creator. If your sculpture of a man is purchased by the city of Fredericton and the city decides to put a dress on it, paint it blue, or feature it in a cigarette advertisement, you can argue that this action infringes your moral rights. You can choose to waive your moral rights. Waiving your moral rights does not affect your other rights under copyright law but it does prevent you from being able to sue for moral rights infringement.

### **What is Fair Dealing?**

Even though you have copyright in your work there are certain circumstances when other people may use your work without having to pay you or get your permission. In these limited circumstances they will not be infringing your rights. This is called Fair Dealing. A person may use your work for private study, research, criticism, review or news reporting. Schools may also put on a live performance of your work provided that the audience is mostly made up of students and instructors, the performance is not for profit, and you are credited as the source. These uses will not constitute a violation of your copyright and a lawsuit for infringement would not succeed.

### **What is the Public Domain?**

Fifty years after your death your copyright expires. When this happens your work is said to enter the Public Domain and any person may legally copy it without infringing the rights of your heirs or your estate. Many publishing companies regularly publish novels by Dickens, theatre companies put on Shakespearian plays, and poster companies reproduce large numbers of Van Gogh's *Sunflowers* because they do not have to pay anyone for the right to do so since all of these works are now in the public domain.

## **WRITERS** **(Novelists, Poets, Playwrights, Songwriters)**

**“Copy write?”**

### **What Writers need to know about Copyright**

#### **Do I have copyright in my novel (play, poem, etc)?**

Yes, you have copyright in anything that you write provided that it exists in a physical form such as on paper or on a computer disk.

#### **What rights does copyright give me? What can I do with it?**

Copyright gives you the exclusive right to exploit your written work. This means that you may make and sell copies to distribute to the public or sell your rights to someone else to make and sell copies (such as selling the rights to publish parts of your novel to a magazine). You also have the right to produce your work in any form. This means that if you have written a novel you can produce it as a book, as individual chapters in a magazine, as an e-book, as a screenplay and so forth. Very often, writers will not take on these tasks themselves but will allow others (such as publishers) to do it. You may enter into a license agreement which will give the publisher limited rights in your work for a limited time. In the case of magazines, this is usually a set fee for a single use. With publishing houses, authors usually receive a percentage of the profits. Authors negotiate agreements with publishers either by themselves or with the help of an agent or lawyer so that their agreements can be tailored to best suit their own interests. A license is a contract and is legally binding between you and the publisher. Once it is signed you cannot make changes unless both you and the publisher agree. If you agree on changes, be sure to get them in writing and never sign a contract without getting advice from your agent or lawyer.

**“This sounds too good to be true. There must be a catch.”**

### **What Writers need to know about Limits on Copyright**

#### **I write for a newspaper. Do I have copyright in things I write at my job?**

You may have copyright in things that you create for an employer. This will depend on the contract of employment that you agreed to when you were hired. If you are employed on a full-time, part-time or temporary basis, the employer will generally have copyright in your work. If you are a freelancer (of any kind of writing) or a journalist (newspaper, magazine) you will retain copyright in your work. Your payment from the employer is essentially a fee for a licence that gives them the right to use the work for a specific purpose such as an article about Halloween costumes for a magazine. If you are a journalist for a national newspaper you will retain copyright. If you are a full-time copywriter for an advertising agency you probably will not retain copyright. When you

are offered a job, ask your employer if he/she expects to retain copyright in your work. You and your employer may agree that the employer holds copyright in the employee's work or vice versa. Just be sure to get any such agreements in writing.

### **Do I have copyright in all my writing?**

No, there are some exceptions. You cannot have copyright in a title, individual words, or short phrases or slogans. You may, however, be able to get other protection for a title or slogan in the form of a trademark. See the trademark section of the Canadian Intellectual Property office for more information (<<http://www.cipo.gc.ca/>>). You also will not have copyright in facts. The statement "Tommy Douglas was Saskatchewan Premier from 1944-1961" is not protected by copyright while the statement "Tommy Douglas, thin and bespeckled, seemingly lacked the physical presence of a great premier, but his speeches revealed the charismatic and bold leader whose innovative social programs changed Canada forever" is protected since it is an original expression of the fact.

### **Do I have copyright if I volunteer to write something?**

While there is nothing in the *Copyright Act* that specifically mentions volunteering, if you have not been paid for your writing you will likely retain copyright unless you have agreed that the person or organization you are assisting will have copyright. To be sure, you may want to have a written agreement that declares you to be the copyright holder.

### **When can someone use my work and not violate my rights?**

A person may use your writing for private study, research, criticism, review or news reporting. While you may not consider some of these uses to be morally fair (such as a scathing review of your short story), legally, it is not infringement.

### **How long does my copyright last?**

You have copyright in your written work for all of your life plus another 50 years after your death. The additional 50 years allows your heirs to have the benefit of copyright. The copyright does not expire on the anniversary of a writer's death but on December 31 of the fiftieth year. If a writer has collaborated with another, the copyright lasts until 50 years after the death of the last surviving author. You should note that your heirs are not permitted to assign the copyright to anyone else for the last 25 years. They will still get the benefit of copyright for the full 50 years but they cannot pass that benefit to others for the last 25 years of the copyright term.

### **"I've been robbed!"**

## **What Writers need to know about Copyright Infringement**

### **How do I know if my copyright has been infringed?**

If you discover someone has used your exact words or entire work and it is not Fair Dealing (see above) your copyright has probably been infringed. If, however, someone has used only a small part of your work (such as a few words) or has the same basic plot but with different characters and outcomes he/she may not be infringing your copyright. It

is possible that he/she created his own work without knowing about, or seeing, yours. Independent creation is allowed and will not be considered infringement.

**What can I do about it?**

If you suspect your copyright has been infringed you should talk to a lawyer. The lawyer will advise you as to whether a claim against a possible infringer is likely to succeed.

**What remedies are available?**

The usual remedies for copyright infringement are an injunction and/or damages. An injunction is a court order to stop the infringing action. If someone has published a copy of your novel he/she will have to stop printing copies and any copies that are already in shops will be recalled. Damages is an award of money that the infringer will have to pay to compensate you for the loss of income from your copyrighted work due to his/her actions.

**When am I infringing others' rights?**

If you use someone else's exact words or rewrite their work using your own words you are infringing his/her copyright and you are also plagiarising. Plagiarising is copyright infringement. If, however, you came up with the same idea without having seen or heard about another's similar work, you will not be infringing upon his/her rights.

## **PERFORMERS** **(Actors, Dancers, Choreographers)**

**“How can you copyright a performance?”**

**What Performers need to know about Copyright**

**Do I have copyright in my dance?**

Yes, you have copyright in a performance (acting, dancing, magic show, etc.).

**What rights does copyright give me? What can I do with it?**

Your rights depend on whether the performance exists in a fixed form. If the performance is not fixed in some physical form then you have the sole right to communicate it to the public by telecommunication (TV, radio, etc), the sole right to perform it for the purpose of telecommunication, and the right to fix it in a physical form such as by making a video of the performance.

If your performance is fixed you have the right to reproduce any fixation (such as a video, CD or photo) of the performance that you make and the right to reproduce any fixation that was made without your permission. If, for example, you discover someone has made a video of your performance in a play you may reproduce that video but the person who made it cannot.

Copyright is also extended to improvised performances and includes performance of a work that is in the Public Domain (see above) such as playing the part of Hamlet.

**“This sounds too good to be true. There must be a catch.”**

**What Performers need to know about Limits on Copyright**

**I work for a theatre company. Do I have copyright in things I create for them?**

Actors, dancers, and other performers will retain copyright for their live performances unless they have entered into a contract with a theatre (or other organization) that gives copyright to the theatre. This does not have to be a contract specifically regarding copyright issues. If you have an employment contract it will likely be sufficient to give the theatre copyright in your performance since the work is being done in the course of your employment. You will still retain your moral rights unless you choose to waive them (see General Information on Copyright, above).

**Do I have copyright if I volunteer to perform something?**

While there is nothing in the *Copyright Act* that specifically mentions volunteering, it is likely that you will retain your copyright unless you enter into an agreement which states otherwise. To be sure, you may want to have a written agreement that declares you to be the copyright holder.

### **When can someone use my work and not violate my rights?**

If the performance is recorded for news broadcasting the broadcast will not infringe your copyright as long as the performance is only a small part of the report and not its subject. A reporter doing a piece on the theatre or new plays can record a small piece of your performance as it is merely incidental to the report. A film company doing a documentary on the play itself however, cannot film your performance unless it has your permission. Incidental use falls under Fair Dealing (see General Copyright Information) and is not considered to violate copyright.

### **How long does my copyright last?**

You have copyright in your performance for 50 years after the date the performance was first fixed in some material form, such as a recording or a sketch of the choreography. If the performance has not been fixed you have copyright for 50 years after the date of the first performance.

**“I’ve been robbed!”**

## **What Performers need to know about Copyright Infringement**

### **How do I know if my copyright has been infringed?**

If you discover someone has used your performance and it is not Fair Dealing (see above) your copyright has probably been infringed. If, however, someone has used only a small part of your work (such as a few dance steps) he/she may not be infringing your copyright. It is possible that he/she created his own work without knowing about, or seeing, yours. Independent creation is allowed and will not be considered infringement.

### **What can I do about it?**

If you suspect your copyright has been infringed you should talk to a lawyer. The lawyer will advise you as to whether your claim against a possible infringer is likely to succeed.

### **What remedies are available?**

The usual remedies for copyright infringement are an injunction and/or damages. An injunction is a court order to stop the infringing action. If someone has copied your performance he/she will have to stop performing or distributing copies of a recording of the performance. Damages is an award of money that the infringer will have to pay to compensate you for the loss of income from your copyrighted work due to his/her actions.

### **When am I infringing others’ rights?**

If you use someone else’s choreography or performance you are infringing his/her copyright. If however, you came up with the same idea without having seen or heard about another’s similar work, you will not be infringing his/her rights.

## **MUSICIANS** **(including Sound Technicians)**

### **“Man, you can’t copyright the Blues!” What Musicians need to know about Copyright**

#### **Do I have copyright in my music?**

You have copyright in your lyrics, composition, or song if it is an original work that is the result of your skill, effort, or experience. The music must also be fixed in a tangible form (such as a video or tape recording of you performing the work, or sheet music) in order to obtain copyright.

#### **What rights does copyright give me? What can I do with it?**

Copyright in musical works gives you the exclusive right to exploit the work, including the sole right to perform, copy, or make a music video of it. You can rent it and even authorize others to exploit the work such as giving another musician the right to sample. You also have moral rights: the right to be identified as the creator of the music, the right to prevent its distortion, alteration, or mutilation in a way that offends your reputation or honour, and the right to prevent the association of your work with a product, service or cause to which you are personally opposed. If your music appears in a commercial for a product created in sweatshops for example, you may exercise your moral rights by suing to stop the association of your music with that product. Unless you have waived them, moral rights continue to exist even if you have sold the music or authorized someone else to reproduce it.

#### **Do I have copyright in my CD?**

There may be several copyrights in a single CD.

First, a musician who records his or her own CD has copyright in that CD as a whole. The musician has the right to copy and sell the recording. Alternatively, copyright in a CD may rest with the “maker” of the recording. The maker is sometimes defined as the person who orders or arranges the first recording or fixation of the music. The maker could be a producer or a record company. In this instance, the producer or record company would have copyright in the CD as a whole and may copy and sell it.

Second, the sound technicians and performers who contributed to a recording will also have an interest in their contributions to the CD. These interests are called neighbouring rights. Neighbouring rights expire 50 years after the performance or sound recording was first fixed. If it was not fixed the rights expire 50 years after the first performance.

Finally, the composers of the lyrics and music for individual tracks on the CD will also have copyright in their contributions. They have the right to exploit the financial benefits of their contributions apart from the CD as a whole. If you are a musician considering a new CD project, you should talk with a lawyer.

**“This sounds too good to be true. There must be a catch.”**

## **What Musicians need to know about Limits on Copyright**

### **I’m in a band. Do I have copyright in things I create as a member?**

Yes, you have sole copyright in the songs you create independently of other band members. If you and a band member collaborate on a song and you can’t determine who contributed what, you would have joint copyright in the song with the other band member. Think of Lennon/McCartney. If you can clearly distinguish your work from the work of your colleague, both of you will have sole copyright in your individual contributions. This usually occurs when one member is the lyricist and another the composer. Think of Gilbert & Sullivan (*The Mikado*), or Lerner & Lowe (*My Fair Lady*).

### **Do I have copyright if I volunteer to play something?**

While there is nothing in the *Copyright Act* that specifically mentions volunteering it is likely that you will retain your copyright unless you enter into an agreement that states otherwise. To be sure, you may want to have a written agreement that declares you to be the copyright holder.

### **When can someone use my work and not violate my rights?**

If another person takes some of your work and adds a substantial amount of her own skill to result in a new original work, he/she may have copyright in that new work even though it infringes on your copyright. So, someone can take parts of your acoustic guitar composition and add new bars, lyrics and a string arrangement to create a new work. While he/she will still need your permission to use the pieces of your copyrighted work, he/she will have copyright in the new work he/she has created. Fair Dealing also applies (see General Copyright Information, above).

### **How long does my copyright last?**

Your sole copyright in a musical work expires 50 years after your death. The additional 50 years allows your heirs to benefit from your copyright. They cannot, however, assign the copyright to anyone else during the last 25 years of this 50-year period. They will still get the benefit of copyright for the full 50 years but they cannot pass that benefit to others for the last 25 years of the copyright term. If you sell your copyright it expires 25 years after your death. Joint copyright expires 50 years after the death of the last surviving creator. The copyright on a sound recording expires 50 years after its first fixation. Copyright does not expire on the anniversary of a musician’s death but on December 31 of the fiftieth year.

**“I’ve been robbed!”**

## **What Musicians need to know about Copyright Infringement**

### **How do I know if my copyright has been infringed?**

In a creative discipline like music it may be difficult to determine whether or not your copyright has been infringed. Your ear might be your best source. If you hear someone else playing your song your copyright has probably been infringed. If, however, he/she has used only a small part of your music or if her music is very similar to yours he/she may not be infringing your copyright. It is possible that he/she created her work without knowing about, or seeing, yours. Independent creation is allowed and will not be considered infringement.

**What can I do about it?**

If you suspect your copyright has been infringed you should talk to a lawyer. The lawyer will advise you as to whether your claim against a possible infringer is likely to succeed.

**What remedies are available?**

The usual remedies for copyright infringement are an injunction and/or damages. An injunction is a court order to stop the infringing action. If someone has copied your song, CD, performance, etc., he/she will have to stop performing or distributing copies of a recording of the work. Damages is an award of money that the infringer will have to pay to compensate you for the loss of income from your copyrighted work due to her actions.

**When am I infringing others' rights?**

You are infringing on another's copyright when you copy or perform his/her lyrics, composition, recording, and so forth without her permission. If, however, you came up with the same idea without having seen or heard about another's similar work, you will not be infringing his/her rights.

## **VISUAL ARTISTS** **(Illustrators, Painters, Printmakers, Sculptors, Artisans)**

**“What a lovely copyrighted painting!”**

### **What Visual Artists need to know about Copyright**

#### **Do I have copyright in my painting (pottery, illustration, graphic design)?**

Yes. You have copyright in your artwork so long as it is an original work of skill, effort, or experience and it is in a physical form. You retain copyright in your work even if you sell it to a private owner or public gallery, unless you enter into an agreement that states otherwise.

If you use your painting, pottery design, or graphic design as a model or pattern to produce more than 50 single useful articles (such as a flower pattern on a plate or a short, square vase) in most cases your model or pattern is considered to be an industrial design. Industrial designs are not protected under the *Copyright Act* but under the *Industrial Design Act*. Unlike copyright, you must register your design in order to benefit from the act and there are limitations on the term and kinds of protection. It is possible to have both copyright and an industrial design in the same work. Since the legal distinction is a fine one, it is best to seek legal advice if you are considering producing or have produced over 50 copies of a useful item from a single artwork.

#### **What rights does copyright give me? What can I do with it?**

Copyright gives you two distinct sets of rights: economic rights and moral rights. Economic rights give you the sole right to make reproductions of the work and/or to authorize someone else to do so, such as photographing a painting or filming a drawing. Anyone who wants to reproduce your work has to get your permission first. You also have exhibition rights for works created after 1988. This right entitles you to receive payment when your art is exhibited in a public exhibition and is not for sale. You will probably be paid at the rates established by CARFAC (see link below). You also have moral rights in your art (see General Information on Copyright, above).

**“This sounds too good to be true. There must be a catch.”**

### **What Visual Artists need to know about Limits on Copyright**

#### **I illustrate books for a publisher. Do I have copyright in things I create for them?**

Artists who are under contract to produce art for an employer do not have copyright in works they produced for that employer. If you work for an animation company and create 3-D models of characters for animated movies, you will not have copyright in your animations. Nor is it likely that you will have copyright in things you produced on commission. Copyright in commissioned portraits or photographs stays with the individual who commissioned the work.

### **Do I have copyright if I volunteer to create something?**

While there is nothing in the *Copyright Act* that specifically mentions volunteering it is likely that you will retain your copyright unless you enter into an agreement that states otherwise. To be sure, you may want to have a written agreement that declares you to be the copyright holder.

### **When can someone use my work and not violate my rights?**

Artists should be aware of the concept of Fair Dealing. In Canada, Fair Dealing permits art work to be used by the general public for private study, research, review, news reporting or news summary without infringing copyright. Educational institutions such as museums and libraries may also reproduce your work for research or collections management purposes without infringing on your right to reproduce your work. If your sculpture or painting is installed in a public place, like inside a public school or on the lawn of government office building, the public may be permitted to create and publish paintings, drawings, photographs, or films of your work without infringing on your copyright. If your sculpture is installed in a public place and appears in the background of a film or postcard, this is referred to as incidental use and the filmmaker or card company would not be infringing your copyright.

### **How long does my copyright last?**

You have copyright in your art for all of your life plus another 50 years after your death. The additional 50 years allows your heirs to have the benefit of copyright. The copyright does not expire on the anniversary of an artist's death but on December 31 of the fiftieth year. You should note that your heirs are not permitted to assign the copyright to anyone else for the last 25 years. They will still get the benefits of copyright for the full 50 years but they cannot pass that benefit to others for the last 25 years of the copyright term.

**“I’ve been robbed!”**

## **What Visual Artists need to know about Copyright Infringement**

### **How do I know if my copyright has been infringed?**

If you discover someone has used part or all of your artwork, and it is not Fair Dealing your copyright has probably been infringed. If, however, someone has used only a small part of your work or if her work is very similar to your work he/she may not be infringing your copyright. It is possible that he/she created her work without knowing about, or seeing, yours. Independent creation is allowed and will not be considered infringement.

### **What can I do about it?**

If you suspect that your copyright has been infringed, you should talk with a lawyer. The lawyer will advise you as to whether your claim against a possible infringer is likely to succeed.

### **What remedies are available?**

The usual remedies for copyright infringement are an injunction and/or damages. An injunction is a court order to stop the infringing action, such as unauthorised reproductions or exhibition. If someone has published a copy of your painting or photograph he/she will have to stop making copies and any copies that are already in shops will be recalled. Damages is an award of money that the infringer will have to pay to compensate you for the loss of income from your copyrighted work due to her actions. A famous Canadian example of infringement of moral rights occurred when the Eaton Centre in Toronto tied red Christmas ribbons around the Canada geese in Michael Snow's mobile sculpture. The artist felt that his sculpture was modified by the decorations in a way that diminished his reputation or honour. He sued and won and the ribbons had to be removed.

### **When am I infringing others' rights?**

If you use someone else's work, in whole or in part, without his/her permission you are infringing his/her copyright. If however, you came up with the same idea without having seen or heard about another's similar work, you will not be infringing his/her rights.

**“Is that everything I need to know?”**

**Probably, but here are some more resources just in case:**

CANCOPY, <http://www.accesscopyright.ca/>

CARFAC, <http://www.carfac.ca/index-en.php>

Copyright Act, R.S. 1985, c. C-42. <http://laws.justice.gc.ca/en/C-42/>

Copyright Office- [http://strategis.ic.gc.ca/sc\\_mrksv/cipo/cp/cp\\_main-e.html](http://strategis.ic.gc.ca/sc_mrksv/cipo/cp/cp_main-e.html)

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