



Artist Contracts & Co-Ownership Info Booklet

**Prepared for Creative Manitoba
by PBSC law students (2018)**

Disclaimer: This document does not contain legal advice. This document was prepared with the assistance of PBSC law student volunteers. PBSC students are not lawyers and they are not authorized to provide legal advice. If you require legal advice, please consult with a lawyer.

CONTRACTS

How can you protect your work?

An original work automatically receives copyright protection as soon as it is created. However, if you register copyright in your work with the Canadian Intellectual Property Office, it is easier to prove who the creators of the work are.

Visit cipo.gc.ca to find out more about the Canadian Intellectual Property Office.

What are the essential elements of a contract?

For a contract to be legally valid, one party must accept an offer that was extended by another party. Both parties must intend to enter into the agreement. There must also be something of value moving between the parties. The contract must also contain the parties' agreement on all of the material issues.



THREE CONTRACT MYTHS

Myth #1: Oral contracts are not enforceable.

Generally, oral agreements are enforceable. Though it's easier to enforce an agreement with specific terms that are in writing, an oral promise can be enforced by looking at the conduct of the parties and what was promised.

Relevant exception: The Copyright Act requires assignments and licences pertaining to copyright be in writing.

Myth #2: Written contracts are always enforceable.

Generally, yes. But courts will assess the clarity of the language used, determine whether there was duress, a mistake, misrepresentation, fraud, or incapacity. If any of these were present during the signing of the contract, then the contract, or some of its terms may be unenforceable.

Myth #3: You need a lawyer to make a contract.

Generally, no, but it is highly advisable. As long as the parties understand and perform their mutual obligations in good faith, whether in writing or by oral agreement, the parties can contract without ever retaining a lawyer.

For examples of what to include in a contract, visit www.creativemanitoba.ca/learning/resources

There, you will find a document titled, "Artist Contracts prepared by PSCB Students Canada 2017". The "General Contract Terms" section will help you understand contract terms and provide a template for writing your own.

INTELLECTUAL PROPERTY AND COPYRIGHT

What is intellectual property and copyright?

Intellectual property is a creation of the mind, including literary and artistic works. Copyright is a bundle of legal rights in intellectual property that is set out in laws that are passed by government. The owner of copyright in a work has the sole right to produce or reproduce the work and can therefore control how others use the work.

What work is protected by copyright?

Copyright protects expression, not ideas. Copyright exists in every original literary, dramatic, musical and artistic work that is created by an author who is a Canadian citizen or who is resident in Canada when the work is created. Originality means the work was not copied and that the author exercised skill and judgment. Note that in this brochure, “author” refers to creators within all artistic disciplines, not just literary works. The work must also be fixed, meaning that the work must be perceivable by others in a tangible form, most commonly via writing, audio or video recording.



OWNERSHIP

Who owns copyright in a work?

Generally, the author owns the copyright that exists in a work. In the absence of any agreement to the contrary, copyright of a work made in the course of employment belongs to the employer. An author may assign (like a sale, where ownership is transferred) or license (like a lease, where ownership is retained) copyrights to another person. A person who owns the copyright is entitled to all rights associated with that work. A work created by two or more authors is co-owned by each author, unless they agree otherwise.

Who are the authors of a work of joint authorship?

One must contribute significantly, but not necessarily equally, to an original collaborative work in order to be considered a joint author.

How are royalties divided among co-owners?

After an author licenses their work, a royalty is created if a percentage of each sale of the licensed work is paid to the author(s) in return for the right to exploit or otherwise use the work. For written work, royalties may be paid by the publisher, or anyone else who uses the work, to the author(s). For music, royalties may be split between the performer(s), the songwriter/composer, the record label, and (possibly) a publisher. It should be agreed upon in writing what royalty rate will be paid to each relevant party. It is normally up to the artists to decide amongst themselves how they will further divide the “performer”, or “writer/composer”, or “author” royalty payment amongst themselves.

How is payment regulated and who owns the copyright for commissioned works of joint authorship?

When a team is commissioned to create a work, the authors should agree on each team member’s obligations and compensation. Authors should also discuss copyright ownership with the individual who commissioned the work. In the absence of any agreement to the contrary, copyright of a work made in the course of employment belongs to the individual who commissioned the work.

RIGHTS IN WORKS OF JOINT AUTHORSHIP

How are rights divided among joint authors?

Joint authors are co-owners of the copyright in their collaborative work. However, the exact division of copyright between joint authors is not a well-established area of law. Therefore, it is crucial that when collaborating on a work of joint authorship, an agreement is made on how each author can exploit copyright in the collaborative work. Authors should agree to their rights to exploit copyright in a written contract, if possible, prior to commencement of the collaboration. If parties disagree regarding exploitation of copyright, they may consider negotiation, arbitration, or legal action.

How do joint authors license copyrights?

Authors can grant a license to allow others to use their work. Before collaboration begins, authors should agree upon the terms of licensing. This includes whether a license can be granted individually, whether the fees they collect should be divided and in what proportions, or if each artist can keep the profits of licensing agreements they enter into individually.

What if you are unhappy with a contract you entered?

Once agreed upon, an author remains bound by the terms of the contract, unless both parties agree to end the contract, or if the other party breaches a material term of the contract. However, prior to the entering into a contract, parties can create terms which allow for the early termination of the contract. Such terms should be specific and clear and address the grounds upon which termination can occur, as well as the consequences of termination.

What can you do if a contract is breached?

If a contract is breached, inform the party who is in breach that they are obligated by contract to fulfil the breached term(s). If they do not comply, you can send a more formal request, for instance, a demand letter urging them to fulfill their obligation. If the party still refuses to comply with the terms of the contract, you can pursue legal action. Some alternatives to litigation include renegotiation of the terms of the contract (both parties must agree to new terms) or arbitration. You may also look to see if the breached term is specified within the contract as grounds to set aside the contract altogether.





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