



Creative Manitoba

COPYRIGHT & FAIR DEALING INFO BOOKLET

Prepared for Creative Manitoba
By Pro Bono Students Canada (2020)



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COPYRIGHT

WHAT IS COPYRIGHT?

Copyright is the exclusive legal right to produce, reproduce, publish or perform an original literary, artistic, dramatic or musical work. The creator is usually the copyright owner. However, an employer—for example, a film studio—may have copyright in works created by employees unless there is an agreement in place stating otherwise.

Copyright includes the right to first publish, reproduce, perform, and show a work in public. Copyright allows the creator or copyright holder the exclusive right to (but not limited to):

- Reproduction
- Public performance
- Publication
- Translation
- Conversion into other forms (example: converting a dramatic work into a novel)
- Communicating or Exhibiting the work to the public
- Renting out the work; and
- Selling or transferring ownership of the work

WHAT TYPES OF WORKS CAN I COPYRIGHT?

Literary works such as books, pamphlets, computer programs and other works consisting of text (Such as lyrics without music)

Dramatic works such as motion picture films, plays, screenplays and scripts

Musical works such as compositions with or without words

Artistic works such as paintings, drawings, maps, photographs, sculptures and plans

Sound recordings, meaning recordings consisting of sounds, whether or not a performance of a work, but excluding any soundtrack of a cinematographic work where it accompanies the cinematographic work

Performers' performances - a performance of an artistic, dramatic or musical work, whether or not the work was previously recorded and whether or not the work's term of copyright protection has expired, a recitation or reading of a literary work, whether or not the work's term of copyright protection has expired, an improvisation of a dramatic, musical or literary work, whether or not the improvised work is based on a pre-existing work

WHAT CAN/CAN'T BE COPYRIGHTED?

Only original literary, artistic, dramatic or musical works can be copyrighted. An original means that the creator had to use minimal effort to create a work that did not exist before. For example: poems, paintings, plays, stories, songs, or software.

WHO OWNS THE COPYRIGHT?

The creator of the work owns the copyright unless otherwise stated in a contract.

Where the creator of a work was in the employment of some other person or under a contract of service or apprenticeship and the work was made in the course of their employment, the person by whom the author was employed shall, in the absence of any agreement to the contrary, be the first owner of the copyright (freelance, contract, employee)

For photos or commissioned pieces, the copyright is owned by the creator, not the person who hired the creator, unless otherwise stated in an agreement.

If a work is produced by the collaboration of two or more authors (joint authorship) in which the contribution of one author is not distinct from the contribution of the other author or authors, both shall hold equal copyrights. On the other hand, if you can separate out each individuals' contribution, then everyone can have separate copyright (e.g., where each person writes a chapter in a collection, they may have copyright in the individual chapter they wrote).

HOW LONG DOES A COPYRIGHT LAST?

Generally, copyright lasts for the life of the author and for 50 years following their death starting at the end of that calendar year. Therefore, protection will expire on December 31 of the 50th year after the author dies. Even if the work was prepared in the course of employment (so it is owned by the corporate employer rather than the employee), the term is still the author's life, plus 50 years.

In the case of a work that has more than one author, the copyright will last for the remainder of the calendar year in which the last author dies, and for 50 years after that.

In the case of a work where the identity of the author is unknown, copyright in the work exists for whichever is the earlier of: the remainder of the calendar year of the first publication of the work plus 50 years, or the remainder of the calendar year of the making of the work plus 75 years.

HOW DO I TRANSFER OWNERSHIP OF A COPYRIGHT?

There are two ways to transfer copyright of a work:

Assignment – An assignment is the transfer of some or all of your rights to another party. An assignment can last for the entire term of the copyright or for part of it.

License – A licence gives another party permission to use your work under certain conditions, but you keep ownership and maintain your rights

Transfer of work can be very complicated, and it is highly recommended to get a professional to draft these agreements for you.

COPYRIGHT VS MORAL RIGHTS

Moral rights are the author of the works right to the integrity of the work.

- **Attribution** (Right for you to be credited as the creator, or be anonymous),
- **Integrity** (Right to not have the work altered in a manner that damages your reputation)
- **Association** (Right to decide what your work is associated with)

Moral rights are owned by the creator, even after copyright is assigned or licensed to another. You cannot assign moral rights to another, but you can waive your moral rights in part or whole. Waving your moral rights is agreeing to not enforce your moral rights against buyer/new owner of the copyright.

DOES EACH PROVINCE HAVE ITS OWN COPYRIGHT LAWS?

Copyright is federally regulated (not provincially regulated) so the laws are the same for all of Canada.

PROTECTING YOUR WORK: WHY COPYRIGHT YOUR WORK?

Copyright gives you the sole ability to use and produce your work and stop others from using or recreating your work without your permission (Infringement).

WHAT IS COPYRIGHT INFRINGEMENT?

It is an infringement of copyright when any person uses, recreates, or performs a copyrighted work without the consent of the owner of the copyright.

It is considered infringement of copyright when a work, is **without the consent** of the copyright's owner:

- 1) Sold, rented out, or exhibited in public
- 2) Distributed in a way that would negatively affect the owner of the copyright,

There is a difference between copyright infringement and plagiarism. Where Infringement is an unauthorized reproduction of authors work, plagiarism is passing off others' work as your own.

HOW TO COPYRIGHT YOUR WORK

To file/register your copyright online or in person is done through the Canadian Intellectual Property Office (CIPO). To register a copyright online, go to the online copyright registration login: https://www.ic.gc.ca/app/scr/opic-cipo/da-cpr/depot-filing/connexion-login_eng.htm

Note that an account must first be created before logging in and filing a copyright.

There is a cost/fee to copyright your work/copyright under your artist name:

- \$50 to apply for registration of **a copyright**
- \$65 for registration of an **assignment or license** of a copyright
- +\$15 if not submitted online through the CIPO website

WHAT PROTECTIONS ARE THERE BEFORE FILING FOR COPYRIGHT?

Generally, original work is automatically protected by copyright when created. However, registration of a copyright provides for a certificate of registration that can be used in court as evidence of ownership of the protected work.

WHEN DO I NEED TO FILE FOR A COPYRIGHT?

You should copyright your work if you think that at some point in the future you will need to enforce your copyright protections to prevent others from using or recreating your works.

WHAT DO I DO IF SOMEONE USES MY COPYRIGHT?

- Ask them to stop/take it down with reference to your copyright number if you have it. Obtaining legal advice or using the court system to enforce your rights is expensive; consider self-help remedies that might be effective (such as watermarking your pictures, if they're available online).
- Retain an intellectual property rights lawyer.
- Sue for an injunction to end use of your copyrighted materials and prevent further use by that party
- International copyright concerns: Approach WIPO for enforcement of the WCT and the WTO for enforcement of TRIPS. Note that Canada and the United States have both signed the WCT and TRIPS.

WIPO (World Intellectual Property Organization): a specialized agency under the United Nations. It seeks to encourage the protection of intellectual property and creative activity.

WCT (World Intellectual Property Organization Copyright Treaty): An international agreement which strengthens the protection of certain intellectual property works and the rights of their creators.

WTO (World Trade Organization): an organization which seeks to encourage the free, predictable and smooth flow of trade. This is done primarily through the establishment of global rules of trade which are adopted by member states through international agreements, such as TRIPS.

TRIPS (The Agreement on Trade-Related Aspects of Intellectual Property Rights): an international legal agreement between all WTO members which establishes minimum standards for regulating many forms of intellectual property. These standards are supposed to be applied by WTO member state governments against other WTO member state citizens.

Consider the intellectual property laws local to the area where the infringement is being made. It can be very difficult to enforce copyright over the internet as it may not always be clear who is infringing your work. Even if you do know who it is, they may be in another jurisdiction where it is difficult to track them down.

Respecting others work: How do I check if a work is copyrighted?

To see if a work is already copyrighted, search for it in the Canadian copyright database at: http://www.ic.gc.ca/app/opic-cipo/cpyrghts/dsplySrch.do?lang=eng&wt_src=cipo-cpyrght-main&wt_cxt=toptask

If a work is copyrighted, you might be able to use it under fair dealing. For more information on fair dealing, please the fair dealing section.

What is not copyright infringement?

It is not a copyright infringement if you are given consent by the owner of the copyright to use, recreate or perform their work. **Copyright can't be extended to ideas**, so it is not a copyright infringement to copy an idea, only the manner in which the idea is expressed.

If the work uses a small amount of copyrighted material it may not be infringement, but there would be a point where the amount used would qualify as infringement. In other words, using a small amount of copyrighted material may not be infringement, especially if it is a very small piece of a larger work, like a single line from a song.

What happens if I used copyrighted work accidentally?

First, stop.

Possible defences to copyright infringement:

- Educational use in a non-profit setting. If the work is used for education/training where there is profit, it would still be considered infringement.
- Does the work fall under Fair dealing/public domain?
- The work was independently created, without access to or knowledge of the copyrighted work.

What are neighbouring rights?

Neighbouring rights are the rights afforded to performers (musicians, vocalists and sound records such as labels) to be paid when their sound recordings are performed in public or communicated to the public by telecommunication.

Where to find more information

The Canadian Intellectual Property Office (CIPO):

- [CIPO's guide to copyright:](#)
- [How to transfer ownership of a copyright](#)
- [For specific questions and extra assistance from CIPO:](#) 1-800-328-6198
- [CIPO's Pamphlet on Copyright](#)

[The Copyright Act](#)

[The Copyright Modernization Act:](#)

[The Right to Reproduce Work](#)

FAIR DEALING

WHAT IS FAIR DEALING?

In Canada, the *Copyright Act* establishes fair dealing, a framework allowing the use of copyrighted material without the owner's permission so long as certain conditions are met.

to assess whether a dealing was fair by considering the following factors:

- 1) **the purpose of the dealing:** balance between user's rights/access to making sure the exception itself is not purely (or even mostly) for commercial gain;
- 2) **the character of the dealing:** if several copies of the same item are being used within this exception, probably leans to being unfair BUT if it's used for a specific, limited purpose, more likely to being found fair. This is additionally balanced by the custom/practice of the industry that the work is being used in, whether the copy is being destroyed after, and more;
- 3) **the amount of the dealing:** quantity of work taken is not always determinative, but the less you take the more likely it is to be fair. How much is being copied is paramount here, and trivial amounts point to it being fair;
- 4) **alternatives to the dealing:** did you actually need to use the copyrighted work you want an exception to, or is this unneeded (and unwarranted) use of the work? Were there non-copyrighted viable alternatives? This plays into whether the dealing is fair or not;
- 5) **the nature of the work:** has the work been published? If it helps to disseminate the original work, dealing could be seen as fair BUT if the work was confidential it's highly likely it was unfair use;
- 6) **the effect of the dealing on the work:** if the dealing competes with the original work or blunts some effects of it in a direct manner (not due to parodying, critiquing or satirizing--- but competing or cutting the legs out underneath), then it's possible it is unfair.

Although these considerations will not all arise in every case of fair dealing, this list of factors provides a useful analytical framework to govern determinations of fairness in future cases.”

WHAT CAN I USE FAIR DEALING FOR?

- YouTube video/music parodies
- Saturday Night Live sketches
- Critiquing/Reviews
- Education/Research

This affects both others' creations and yours! Reason being that fair dealing is a two-way street. You can use the work of others in specific fashions, but they also cite fair dealing (appropriately, of course) to use your works.

I AM AN ARTIST, WHAT CAN I USE?

FAIR DEALING

There are two key steps to determining fair dealing. First is determining whether the dealing is for research, private study, criticism, review, or news reporting -- all of which are protected under section 29 and its subsections within the Copyright Act. The second step is to assess whether the dealing is fair. When determining if the work has been dealt with fairly, it is up to the artist/person using the work to prove that their dealing with the work has been fair.

As fair dealing can vary, it's important to be cautious while reading the terms and conditions each copyrighted item is subject to. Look to the factors of fair dealing shown above as well.

In addition to research, private study, criticism, review, and news reporting, the *Copyright Modernization Act* of 2012 added parody and satire to the list.

PERMITTED ACTS

The *Copyright Act*, under s 32.2(1), lists miscellaneous permitted acts that do not infringe copyright, such as:

- Painting, drawing, engraving, photographing or videotaping an architectural work or a sculpture that is permanently situated in a public space. Artists have been doing this for ages and it's at the basis of your creativity.
- Reading or reciting in public a reasonable extract from a published work. This can be quite helpful if you are a performance artist. It's important to err on the side of caution by using an objectively small portion such as a single excerpt from a longform text.
- Using any mould, cast, sketch, plan, model or study so long as it's not repeated or imitates the main design of the original work.

FURTHER PERMITTED ACTS (FOR MUSICIANS)

Section 32.2(2) of the *Copyright Act* offers additional acts that do not infringe on copyrights. So long as they are not motivated by any gain, these acts can be performed at agricultural fairs or exhibitions that receives a grant from or is held by federal, provincial or municipal authorities. These acts include:

- Live musical performances in public;
- The performance in public of a sound recording embodying a musical work or a performer's performance of a musical work.

MIXED MEDIA AND REMIX

For more information, please see the Creative Commons (CC) table under subsection 3.B.

WHERE CAN I GET “FREE STUFF”?

PUBLIC DOMAIN

The public domain is made up of those intellectual properties and works which no longer have individual ownership by any person or the Crown. It tends to be information that is generally available and cannot be copyrighted anymore.

Proceed with Caution: collections of public domain materials may be copyrighted for their unique arrangement.

Work tends to arrive in the public domain through one of three methods:

- Expired copyright
 - Either through non-renewal of copyrighted works, or passage of time
- Deliberate dedication to the public domain by the author(s)
- The work falls outside of copyright law

There are collections and lists of public domain works held in archives online and around the world. More is added to the public domain every year as rights expire. Laws change to alter the terms of times particular to each country, however.

It's important to note that while the public domain can be a great resource for creating your own work, derivative works or republished versions of public domain content also each have their own copyright terms and may incur new effective copyrights on the works themselves.

For clarity, a derivative work is a work based on an already-existing work, including adaptations of literary materials into different formats, abridgements or condensed versions of existing works. Think of it as a substantial transformation of a work, whose transformation would not be possible without the original work.

For example, take Shakespeare plays -- movie versions of his works would have their own copyright. The rights of this and other versions are further explained by the University of British Columbia Library: "...[Although] copyright in [Shakespeare's] plays expired long ago, many of the published editions of his plays contain added original materials (such as annotations, translations, footnotes, prefaces etc.) that are protected by copyright because the authors have used skill and judgment in creating the new material. This creates a new copyright in the additional original works, but not in the underlying text of the original work."

More info on: <https://guides.library.ubc.ca/c.php?g=698822&p=4961440#s-lib-ctab-15622469-5>

CREATIVE COMMONS

As discussed in above in the Copyright section, a **license** gives another party permission to use your work under certain conditions, but you keep ownership and maintain your rights.

The umbrella of Creative Commons (CC) includes works that have been permissively licensed and made available for reuse. Ultimately, CC licenses indicate what you can (and cannot) do with specific works that use the system. They're a great shorthand for quickly and universally telling other parties what they can do with your work, and also lets others communicate similarly with you -- saving you the time and money of drafting a license from scratch.

CC offers six copyright licences based on the following four conditions:

- 1) **Attribution (by)** Mandatory - must always credit me.
- 2) **ShareAlike (sa)** If I allow you to change it, please repeat my CC licence.
- 3) **NonCommercial (nc)** Can use work but you cannot make money from it.
- 4) **NoDerivatives (nd)** Your work must equal mine - no changes please!

By combining the above conditions, we get the following six licences, ordered from most to least restrictive regarding dissemination and use of the licensed materials. If you apply these licenses to your work, here's what others can do with it:

Licence Type:	Permitted Use:	Requirements and Restrictions
1) Attribution (CC BY)	Lets OTHERS : <ul style="list-style-type: none"> - Distribute, tweak, remix, and build upon someone's work - even commercially. 	<ul style="list-style-type: none"> - Credit original creation
2) Attribution ShareAlike (CC BY-SA)	Lets OTHERS : <ul style="list-style-type: none"> - Distribute, tweak, remix, and build upon someone's work - even commercially. 	<ul style="list-style-type: none"> - Must credit your original creation under identical terms
3) Attribution-NoDerivs (CC BY-ND)	Lets OTHERS : <ul style="list-style-type: none"> - Reuse the work for any purpose - even commercially. 	<ul style="list-style-type: none"> - Adapted form cannot be shared with others - Credit must be provided to you
4) Attribution-NonCommercial (CC BY-NC)	Lets OTHERS : <ul style="list-style-type: none"> - Remix, tweak, and build upon work non-commercially 	<ul style="list-style-type: none"> - Must acknowledge the original creator per the terms - Cannot be used commercially
5) Attribution-NonCommercial-ShareAlike (CC BY-NC-SA)	Lets OTHERS : <ul style="list-style-type: none"> - Remix, tweak, and build upon work non-commercially - Distribute new work 	<ul style="list-style-type: none"> - Must credit the original creator - Must license the new creation under the same terms
6) Attribution-NonCommercial-NoDerivs (CC BY-NC-ND)	Lets OTHERS : <ul style="list-style-type: none"> - Download and sharing of the original work 	<ul style="list-style-type: none"> - Credit the original creator; - Cannot change original work - Cannot use them commercially

CC0 is a special type of license that essentially indicates work with the same terms and conditions of those works in the public domain.

RESOURCES

The following list of resources offer collections of images that fall into either public domain or creative commons:

- [Creative Commons Search](#)
- [Flickr Creative Commons Search](#)
- [The Noun Project](#)
- [Wikimedia Commons](#)