

Demystifying Copyright

*Abridged for Visual Artists from:
A Guide to Canadian Copyright Basics for Writers,
Performers, Musicians and Artists

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This Project was made possible by the ProBono Students Canada Program.

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CARFAC Ontario with permission from
the Fredericton Arts Alliance**

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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, 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.

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
Sunny Handa, *Copyright Law in Canada* (Markham: Butterworths, 2002).
Lesley Ellen Harris, *Canadian Copyright Law* 3rd (Toronto: McGraw Hill Ryerson, 2001).
Industrial Designs Act, R.S. 1985, c. I-9. <http://laws.justice.gc.ca/en/I-9/>
David Vaver, *Copyright Law* (Toronto: Irwin Law, 2000).

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