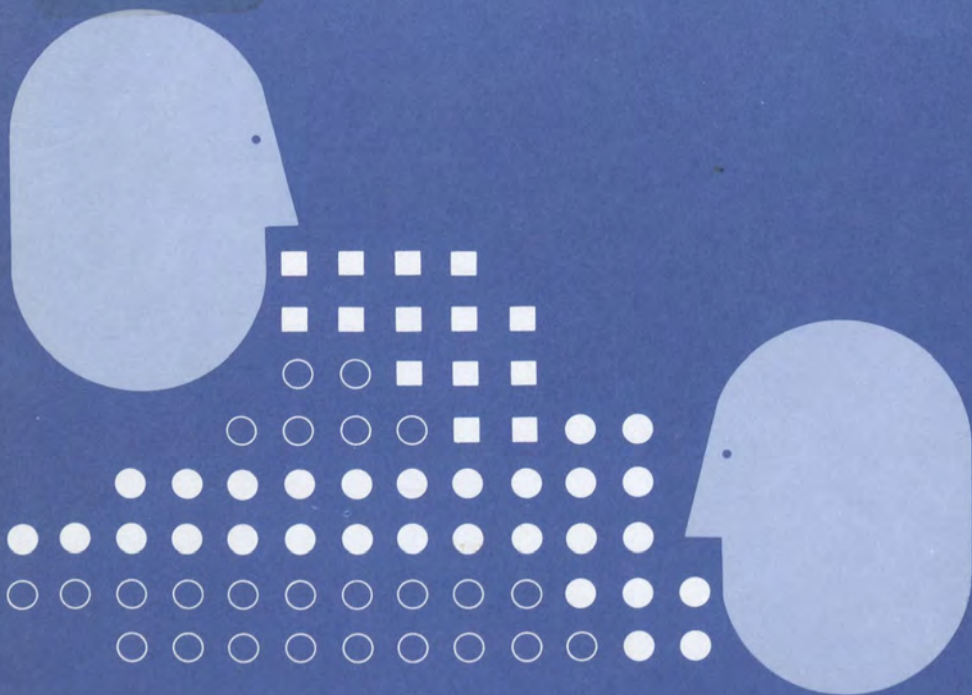


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Copyright: Questions and Answers



Consumer and
Corporate Affairs Canada

Bureau of Corporate
Affairs and
Legislative Policy

Consommation
et Corporations Canada

Bureau des Corporations
et de la politique
législative

Canada

Copyright:
Questions and Answers

INDUSTRY, SCIENCE AND
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The information in this booklet is to be considered solely as a guide and should not be quoted as or considered to be a legal authority. It may become obsolete in whole or in part at any time without notice. Authority must be found in the *Copyright Act*, the Copyright Rules, and in decisions of the courts interpreting them.

Officials of Consumer and Corporate Affairs Canada are not authorized to provide legal advice, opinions, or interpretations concerning copyright law to the public. Such advice, opinions, or interpretations should be obtained from a qualified lawyer with appropriate expertise.

Information circulars on the following subjects are available upon request:

- Computer programs (#1)
- Musical works/contrivances (#2)
- Games (#3)
- Performing rights societies and collectives (#4)
- Changes/corrections to the copyright register (#5)
- Authorship (#6)
- Describing the nature of a work (#7)
- Slogans/Titles/Short Phrases/Names (#8)

PLEASE DO NOT SEND COPIES OF YOUR WORK WHEN
APPLYING FOR COPYRIGHT REGISTRATION.

1

Q. What is a copyright?

- A. Copyright – the right to copy – means that an owner is the only person who may copy his or her work or permit someone else to do so. It generally includes the sole right to publish, produce, reproduce and to perform a work in public.

2

Q. To what does copyright apply?

- A. Copyright applies to all original literary, dramatic, musical and artistic works including books, writings, musical works, sculptures, paintings, photographs, motion picture films, dictionaries, encyclopedias and computer programs. Copyright also applies to mechanical contrivances such as records, cassettes and tapes.

3

Q. Who owns the copyright?

- A. In general, the owner of the copyright is:
- a) the author of the work;
 - b) the employer, if the work was created in the course of employment; or
 - c) some other party if there has been a transfer of rights.

4

Q. How do I obtain copyright?

- A. Copyright in Canada is automatically acquired upon creation of an original work providing that, at the time the work was made, the author was:
- a) a Canadian citizen and/or a British subject, or
 - b) resident within Her Majesty's dominions, or
 - c) a citizen or subject of a country belonging to the Berne Copyright Convention, or

- d) a citizen or subject of a country belonging to the Universal Copyright Convention or which grants by treaty, convention, agreement or law to citizens of Canada the benefits of its copyright statute on substantially the same basis as to its own citizens.

5

Q. Does that mean that I don't have to do anything to be protected?

- A. Nothing needs to be done to get basic protection, but you may apply for voluntary registration.

With regard to protection abroad for published works, see the answers to questions 14 and 15.

6

Q. Is registration of copyright advisable?

- A. Yes. Upon registration a certificate is issued providing evidence that the person registered is the copyright owner. This certificate can be used in court to establish ownership.

7

Q. What is necessary to register my copyright?

- A. If you wish to register it, you should file an application conforming with the prescribed form, copies of which are available from the Office (see question 47 for the complete postal address). The registration process normally takes six to eight weeks.

Q. Is there any cost to register my copyright?

- A. Yes. Refer to the fee schedule. The registration fee covers verification of the application. Registration is effected when the application is accepted, whether at the time of filing or after amendment. A certificate is then issued at no extra cost. The fee must be sent with the application. Cheques should be made payable to the Receiver General of Canada.

PLEASE NOTE: Fees are not refunded if the application has been given a formal verification and is subsequently withdrawn or refused.

Q. Once I have registered, are there any further fees to keep the copyright in force?

- A. No. The single registration fee is all that is required.

Q. Who may sign an application?

- A. Persons authorized to sign an application are:
- the applicant or his or her agent in the case of an individual;
 - a partner in the case of a firm; or,
 - a director, secretary or other principal officer in the case of a corporation.

Q. How long does copyright last?

- A. Generally, copyright in Canada exists for the life of the author and 50 years following his or her death. There are important exceptions:

Author unknown – Copyright exists for 50 years from the date of first publication of the work.

Crown Copyright – Copyright in a work published by or under the direction of Her Majesty the Queen or any government department exists for 50 years from the date of first publication of the work.

Mechanical contrivances (for example, records, tapes and other contrivances by means of which sounds may be mechanically reproduced) – The term of copyright is for 50 years from the date of making the original plate from which the contrivance was directly or indirectly derived.

Photographs – Copyright exists for 50 years from the date of making the original negative from which the photograph was directly or indirectly derived.

Posthumous works – For works not published at the time of the author's death, copyright exists for 50 years from the date of their publication, delivery or performance.

Work of joint authorship – Copyright exists during the life of the author who dies last and 50 years following his or her death.

Q. Is an application checked on receipt to see if the title has already been used?

- A. No. The *Copyright Act* does not give a monopoly to the title of a work. Many works may appear with the same title but if each work has been created independently, each will have its own copyright protection.

13

- Q. Is it necessary to send copies of my work with the application form?*
- A. No. Copies are not required. However, the *National Library Act* requires that two copies of every book published in Canada and one copy of a sound recording manufactured in Canada that has some Canadian content be sent to the National Library within one week of publication. Further information may be obtained by writing to the National Library of Canada, 395 Wellington Street, Ottawa, Ontario, Canada K1A 0N4.

14

- Q. Should I indicate on my work that I hold copyright?*
- A. It is not necessary under the provisions of the *Canadian Copyright Act*. However, to retain copyright protection under the provisions of the Universal Copyright Convention in other countries – from the time of first publication, all copies of your work must be marked with a small c in a circle, the name of the copyright owner and the year of first publication – for example, © CamKell Ltd., 1986.

15

- Q. Is the copyright of a Canadian author valid in foreign countries?*
- A. Yes, on condition that the country in which protection is sought belongs to either the Berne Copyright Convention or the Universal Copyright Convention. These conventions include most countries of the world.

16

- Q. Is the copyright of a foreign author valid in Canada?*
- A. Yes, as long as the author was, at the time the work was created, resident in or a subject of a country belonging to the Berne Copyright Convention or the Universal Copyright Convention, and, in the case of a published work, if it was published in a Commonwealth country or in a country with which Canada has an agreement.

17

- Q. Who owns my copyright when I die?*
- A. Copyright will form part of your estate to be passed on to your heirs.

18

- Q. Can copyright be registered if an application has not been filed before an author's death?*
- A. Yes. An author's work is part of his or her estate and it can be registered by the author's heirs or legal representatives.

19

- Q. If I create work while hired by or in the employ of some other person, to whom does the copyright belong?*
- A. If you were hired or employed by someone to create a work for them, then in the absence of any agreement to the contrary, that person is automatically the owner of the copyright.

- Q. What is the significance of a nom de plume and can I indicate it in an application?*
- A. A nom de plume is a pen name, the name assumed by writers and cartoonists, for example, who do not choose to use their own name on their published work. While a nom de plume may be shown in the application, the full legal name and address of the author are required for purposes of determining the duration of the copyright.

- Q. If I register the copyright for a book of poems, songs or photographs, do I have to pay a separate fee for each poem, song or photograph?*
- A. No. If registration of copyright is desired for a book of poems, songs or photographs, assembled and published together under one title, one registration and one fee is sufficient.

- Q. Do I have to register the copyright for each edition in the case of a periodical work?*
- A. No. In the case of work such as an encyclopedia, newspaper, review, or magazine, or a work published in a series of books, or parts, one registration for the whole work is sufficient.

- Q. Can photographs be protected by copyright?*
- A. Yes. Photographs are proper subject matter for copyright protection. They are classified as artistic works.

- Q. Can games be protected by copyright?*
- A. Games are not protected by copyright, but the various components, such as game board, game rules and instructions, may be. As an example, written rules or instructions can be protected, but the idea of the game or how it works is not included – only the specific language used to explain the rules.

- Q. What protection does the Copyright Act extend to records or tapes?*
- A. The owner of the copyright in a record or tape has the sole right to reproduce it for a period of 50 years from the date the original plate was made.

- Q. Are computer programs subject to copyright protection?*
- A. Yes. Computer programs, regardless of the format in which they are stored, are protected by copyright as literary works.

- Q. What is not registrable under the Copyright Act?*
- A. Themes, ideas, mere titles, names, catch phrases and other short word combinations of no real substance cannot be protected by copyright.

- Q. Is the Copyright Office authorized to correct, rectify or cancel an entry in the Copyright Register?*
- A. The Copyright Office may correct its own errors by issuing a correcting certificate. However, changes in titles, for example, or errors made by the applicant, or expungements, can only be carried out or rectified under the authority of the Federal Court of Canada. The procedure to be followed in these latter cases is outlined in the Federal Court Rules, copies of which are available in any library.

- Q. Can copyrights be sold or assigned?*
- A. Yes. They may be assigned or sold in whole or in part. However, to be valid, any assignment must be in writing and be signed by the owner.

- Q. If I acquire ownership of copyright by an assignment, must I register my assignment with the Copyright Office?*
- A. No. If, however, you do not register the assignment and the original owner assigns copyright in the same work to another person who registers his or her assignment in the Copyright Office, your assignment will be invalid.

- Q. What is the difference between an assignment and a licence?*
- A. An assignment is a sale of rights or of a particular right in a work to a second party and involves a transfer of ownership. A licence does not involve a transfer of ownership. It can be likened to a temporary grant, usually for a fee or royalty, to a second party allowing that person to use a work in a specified manner.

- Q. What is the definition of a published work?*
- A. A work is published when copies of it have been issued to the public. Public performance of a dramatic or musical work, the delivery of a lecture in public, the exhibition in public of an artistic work or the construction of an architectural work do not constitute publication.

- Q. If I register the copyright of an unpublished work, should I re-register it once it is published?*
- A. No. Proof of ownership has been established by the first registration. Nothing further is gained by a second registration.

- Q. Does the Copyright Office assist authors in publishing their works?*
- A. No. Publication is the sole responsibility of the copyright owner.

- Q. Will the Copyright Office prevent others from infringing on my copyright?*
- A. No. The responsibility for policing your copyright rests with you.

- Q. What is plagiarism?*
- A. In the context of copyright, plagiarism is stealing a work of another person and claiming it as one's own.

Q. What is "fair dealing"?

- A. It is the quotation from, or reproduction of minor excerpts of a work in which copyright exists for bona fide purposes of private study, research, criticism, review or newspaper summary. The line between fair dealing and infringement is difficult to define. There are no guidelines as to the number of words or passages that can be used without permission from the author. Only the courts can rule whether fair dealing or infringement is involved.

Q. Can I search the copyright records to determine whether the copyright in a work has been registered or assigned?

- A. Yes. The records of the Copyright Office are open to the public, free of charge. Assistance is provided for those who are not familiar with the various documents that must be searched. The Copyright Office is located in Place du Portage, Tower I, 5th Floor, 50 Victoria Street, Hull, Quebec.

Q. Can libraries make copies of books for student use?

- A. No one is allowed to copy work in which copyright exists without first obtaining permission from the copyright owner.

Q. Do I have to pay royalties for a private performance of a work, such as a record in my home?

- A. No. A private performance for family members in your own home would not constitute infringement.

Q. Are royalties payable for a public performance of music at a dance concert, for example?

- A. Yes. This is one of the rights the copyright holder has. If you use a work that belongs to someone else in this manner, you must pay for its use.

Q. How do I pay in this case?

- A. You are required to pay to the associations called performing rights societies. In many cases, the concert hall, hotel, or other facility may already have made the necessary arrangements.

Q. What is a performing rights society?

- A. A performing rights society is entitled under the *Copyright Act* to collect royalties or fees on behalf of its members for the public performance of their musical works. These fees are distributed to its members who are composers, authors and publishers.

Q. What are the names of the performing rights societies in Canada?

- A. As a result of a merger involving the two former societies, CAPAC (Composers, Authors and Publishers Association of Canada Limited) and PROCAN (Performing Rights Organization of Canada Limited), there is now only one performing rights society in Canada and that is SOCAN (Society of Composers, Authors and Music Publishers of Canada). SOCAN maintains its head office at the following address:

41 Valleybrook Drive
Don Mills, Ontario
M5B 2S6
Telephone: (416) 445-8700
Fax: (416) 445-7108

- Q. What is the difference between copyright and industrial design?*
- A. All literary, dramatic, musical and artistic works are subject matter of copyright protection, regardless of the quantity in which they are reproduced. However, artistic works that are used as models to be applied to useful articles of manufacture and are intended to be reproduced in numbers greater than 50 – for example, containers, toys and furniture – are protected only by the *Industrial Design Act*.

- Q. Where can I obtain copies of the Copyright Act and Rules?*
- A. Copies of the Act and Rules can be purchased from any bookstore selling federal government publications, or from:
- Canadian Government Publishing
Centre
Supply and Services Canada
Ottawa, Ontario
K1A 0S9

- Q. What is the mailing address of the Canadian Copyright Office?*
- A. Copyright and Industrial Design Branch
Place du Portage
Tower 1
50 Victoria Street
5th Floor
Hull, Quebec
K1A 0C9

- Q. Where can I obtain permission to use or reproduce government publications in whole or in part?*
- A. Such works are often referred to as Crown Copyrights and permission to use them can be obtained by writing to the Permissions Officer, Canadian Government Publications Centre, Supply and Services Canada, Ottawa, Ontario, K1A 0S9.

- Q. What is an ISBN number and how is one obtained?*
- A. An International Standard Book Number (ISBN) is a number used for publishing purposes only and is not related to registration of copyright in the Copyright Office. Such numbers are allotted to publishers in Canada through the Canadian ISBN Agency of the National Library of Canada at 395 Wellington Street, Ottawa, Ontario, K1A 0N4. The number identifies one title or edition of a title, from one specific publisher, and is unique to that title or edition. Pamphlets giving further information on book numbering are available free of charge from the Publications Centre of the National Library of Canada at the above address.

- Q. Are video recordings protected by copyright?*
- A. Yes. Video recordings are proper subject matter for copyright protection. They are normally classified as dramatic works. However, if music is involved they would probably be best described as dramatico-musical.

**CORRECTIONS FOR COPYRIGHT:
QUESTIONS AND ANSWERS**

QUESTION 28

Delete the first five lines of the answer and insert:

"The Copyright Office may correct clerical errors made in the preparation of an application or a registration document by issuing a correcting certificate. However, changes of a more substantial nature, such as changes in title or expungements, can only..."