



**Government
of Canada**

**Gouvernement
du Canada**

An overview of Canadian Copyright Law

Canada

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1.1 Copyright and the Government of Canada

- **Copyright falls within exclusive federal jurisdiction.**
- **The *Copyright Act* was enacted in 1924 but has been amended substantially since then.**
- **The Act is administered by Industry Canada but Canadian Heritage and Industry Canada share responsibility for the formulation of copyright policy.**

2.1 What is copyright?

- **Copyright is one type of intellectual property right.**
- **Other types of intellectual property include trade-marks, patents, confidential information, trade secrets, and industrial designs.**
- **Copyright protects the “expression” of ideas (not ideas themselves).**
 - E.g. the idea for a story will not be subject to protection, but the “expressed” or written story will be.

2.2 How does a work become protected?

- **Copyright arises automatically upon the:**
 - creation of an **original** work that;
 - has been **fixed** in a material form.

- **It is unnecessary to mark a work with © for it to be protected.**

- **A creator may register the work with the Canadian Intellectual Property Office to:**
 - provide evidence that the registered person is the copyright owner;
 - help ensure the availability of a full range of remedies.

2.3 Which works are protected by copyright?

- **Copyright protects works belonging to four broad categories:**
 - **Literary:** books, newspapers, articles, poems, software;
 - **Dramatic:** television series, films, videos, plays, operas;
 - **Musical:** musical compositions (with or without words);
 - **Artistic:** paintings, photographs, sculptures, architectural works, works of artistic craftsmanship, engravings and stamps.

2.4 Other categories of works

- **Although all works fall into one of the four categories listed on the previous slide, some types of works have special rules that apply to them:**
 - **Derivative Works:** translations, adaptations;
 - **Collective Works:** creative input from more than one person;
 - **Compilation of Works:** non-original databases, Web sites, encyclopaedias, etc.

2.5 Neighbouring rights

- The *Copyright Act* also provides for “neighbouring rights” (or related rights).
- These rights protect:
 - **Performers’** performances;
 - **Producers’** sound recordings; and
 - **Broadcasters’** communication signals.

3.1 What type of rights are available?

- The *Copyright Act* provides both “economic” and “moral” rights.
- **Economic rights grant the copyright owner the exclusive right to:**
 - reproduce the work;
 - perform the work in public;
 - communicate the work to the public by telecommunication;
 - publicly exhibit the work (applies only to artistic works); and
 - authorize any or all of these.
- **Generally, these rights are « technologically neutral » as they also apply to works available on the Internet.**

3.1 What types of rights are available? (continued)

- **Moral rights protect the author's honour and reputation.**

- **Three categories:**
 - Right of attribution
 - To claim authorship or remain anonymous;

 - Right of integrity
 - To prevent prejudicial changes to a work;

 - Right of association
 - To prevent prejudicial uses of a work in association with a product, service, cause or institution.

- **In the current Act, moral rights are only associated with authors (and not with “neighbours”).**

- **Moral rights cannot be licensed or assigned, but can be waived.**

4.1 Who owns the copyright in a work and for how long?

- **The general rule is that the author is the first owner of the copyright, with the exception of:**
 - **Photographs:** the owner of the original plate (film) is considered to be the copyright owner;
 - **Commissioned photographs and portraits:** copyright belongs to the party that commissioned the work;
 - **Crown works:** the Crown holds copyright on works created by employees in the course of their work;
 - **Works created by employees in the course of their work:** unless agreed otherwise, the employer is the owner of the copyright.

- **In most cases, copyright protection exists from the moment of a work's creation, and for a period of 50 years following the death of the author. When the copyright term expires, works are said to fall into the "public domain."**

4.2 Assignments and licences of copyright

- **Copyright owners may allow others to use their work:**
 - in its entirety or partially;
 - only in certain regions;
 - for a specified duration;
 - in certain media; or
 - in relation to certain types of rights.

- **There are two ways of doing so:**
 - **Licences:** the owner retains his/her rights but grants permission (exclusive or not) for a third party to use his/her work (once or for a specified duration);

 - **Assignments:** involve a change in ownership for the rights.

4.3 How is copyright managed?

- **Licences can be granted on an individual or collective basis:**
 - **Individual:** the right holder (or his agent) negotiates the use of the work.
 - **Collective:** right holders as a group grant a licence (most usually with institutional users, such as schools or broadcasters).
- **The Act encourages - and sometimes requires - collective licensing.**
- **Collective licensing lowers transaction costs, facilitates access to works, as well as the management of rights for individuals.**
- **Tariffs, which include royalty rates for compensation, are approved by the Copyright Board of Canada, a quasi-judicial regulatory body which operates at arm's length from the Government.**

5.1 Exceptions

- **The *Copyright Act* sets exceptions or limits to rights created.**
- **These exceptions permit certain copyrighted works to be used without the owner's consent, for example:**
 - fair dealing (private study, research, criticism, review or news reporting);
 - limited exceptions for schools, libraries, archives, museums and persons with a perceptual disability;
 - compulsory licence for retransmission of broadcast signals;
 - copying of music for private use.

5.2 Infringement and remedies

- **Copyright infringement occurs when a person, without the consent of the copyright owner, does anything that only the copyright owner can do according to the *Copyright Act*.**

- **The *Copyright Act* provides for both civil remedies and criminal penalties for copyright infringement:**
 - **Civil remedies**
 - Injunctions, compensatory damages, statutory damages;

 - **Criminal penalties**
 - Used for commercial dealings in copyright goods, e.g. infringement by a manufacturer, a wholesaler or an importer.

6.1 International aspects

- **Canada is a member of several international instruments related to intellectual property:**
 - The Berne Convention for the Protection of Authors of Literary and Artistic Works;
 - The Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations;
 - The Agreement on Trade-Related Aspects of Intellectual Property Rights (World Trade Organization);
 - The North American Free Trade Agreement;
 - Bilateral trade agreements generally include obligations related to intellectual property.

6.1 International aspects (continued)

- **Foreign nationals are afforded copyright protection in Canada, and Canadians are provided similar rights in foreign jurisdictions, i.e. national treatment.**

- **Canada signed the two World Intellectual Property Organization (WIPO) Internet Treaties negotiated in 1996:**
 - The WIPO Copyright Treaty (WCT)
 - The WIPO Performances and Phonograms Treaty (WPPT).

- **... but has not ratified them; amendments to the Act are needed to do so.**

- **Both treaties (WCT and WPPT) touch on rights in the digital environment, 1) of authors of literary and artistic works; and 2) of performers of music and producers of phonograms (sound recordings).**

7.1 *Copyright Act* Reform in Canada - A history

- **Since 1924, the *Copyright Act* has been amended several times for various reasons:**
 - **International developments**
 - Canada agreed to assume new obligations (often within the framework of free-trade agreements, such as NAFTA).
 - **Technological change**
 - Although the rights established by the Act are of general application, updates to the Act were deemed necessary to take into account new technologies.
- **Two important reforms since 1924.**
- **1988: First stage included:**
 - Legal protection for computer programs (as literary works);
 - Clarification and expansion of moral rights;
 - Elimination of mandatory licensing for the reproduction of musical works;
 - Introduction of a new procedure for licensing of orphan works;
 - Introduction of new rights for creators of artistic works related to the public exhibition of their work;
 - Increased criminal penalties;
 - Recognition of collective societies by a reengineered Copyright Board.

7.1 *Copyright Act* Reform in Canada – A history (continued)

- **1997: Second stage (C-32) included:**
 - Entitling performers and producers of sound recordings to receive royalties for the public performance or broadcast of their performances or sound recordings, such as in bars and restaurants;
 - Creation of a private copying remuneration regime (levy on blank audio recording media);
 - Legal protection to Canadian distributors of books having agreements for exclusive distribution in the Canadian market;
 - Introduction of new exceptions for educational institutions, libraries, archives and museums, broadcasters and to persons with a perceptual disability;
 - Statutory damages to improve the implementation of the *Copyright Act*.

7.1 Copyright Act Reform in Canada – A history (continued)

▪ Recent Bills

- **2003:** C-48: Internet retransmissions excluded from the compulsory licencing regime for the retransmission of television signals. Adopted.
- **2005:** C-60: Implementation of provisions of the WIPO treaties, liability of Internet service providers, exceptions for education sector, photographers considered as authors. Died on the *Order Paper*.
- **2006:** C-59: Made recording of movies in movie theatres a criminal offence. Adopted.
- **2008:** C-61: Implementation of provisions of the WIPO treaties, liability of Internet service providers, exceptions for education sector, photographers considered as authors, exceptions for personal/private uses. Died on the *Order Paper*.

8.1 Who are the stakeholders?

- **Polarized and highly charged environment:**
 - Today, many are interested in copyright, but have limited knowledge;
 - Movement toward explicit recognition of « user rights »;
 - Now, almost everyone is affected by copyright, whereas in the past interest in copyright used to be limited to those directly in the field.

- **In general, five categories of interveners can be identified:**
 - 1) Right holders;
 - 2) Users;
 - 3) Intermediaries;
 - 4) Provinces and territories;
 - 5) International community.

8.1 Who are the stakeholders? (continued)

- **Right holders:**

- Some are preoccupied by the complexity of clearing existing rights in the Act, and others are looking for new rights; all are opposed to exceptions. Interests and positions can diverge significantly.

- Authors: Union nationale des écrivaines et des écrivains du Québec (UNEEQ), Writers Union of Canada (WUC);
- Producers/publishers: Association nationale des éditeurs de livres (ANEL), Canadian Recording Industry Association (CRIA);
- Artists associations: Union des artistes (UDA), Alliance of Canadian Cinema, Television and Radio Artists (ACTRA).

8.1 Who are the stakeholders? (continued)

- **Users:**

- Are looking to use – often without having to pay or to obtain authorization – as much copyright material as possible;
- Seek to maintain and expand exceptions and the recognition in law of “user rights”;
- Major user groups include:
 - educational institutions;
 - libraries, museums, archives;
 - groups/academics speaking on behalf of the “public interest.”

8.1 Who are the stakeholders? (continued)

- **Intermediaries:**

- Internet service providers do not want to be held responsible for activities of users of their networks;
- Broadcasters (who are also copyright owners and users) hope for a reduction of their compensation obligations.

- **Provinces and territories:**

- The Copyright Consortium of the Council of Ministers of Education, excluding Quebec, call for new exceptions for education;
- Quebec is opposed to exceptions and advocates stronger rights for creators.

- **International community (United States, G8, Security and Prosperity Partnership of North America):**

- Wants Canada to ratify the WIPO treaties and afford vigorous protections for the benefit of right holders.