

INTELLECTUAL PROPERTY

COPYRIGHT PROTECTION IN CANADA FOR ARTISTS

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Copyright Defined

In Canada, “copyright” refers to the bundle of rights conferred by the *Copyright Act* (the **Act**) on the copyright owner and author of a work. The owner of copyright has the sole right to produce or reproduce a work (or a substantial part of it) in any form, and the sole right to exhibit the work in public. Copyright provides protection for literary, artistic, dramatic or musical works and other subject-matter including performer’s performances, sound recordings and communication signals. If a work is unpublished, copyright includes the right to publish the work or any substantial part of it.

Copyright applies to all *original artistic works*, such as paintings, drawings, maps, photographs, designs, musical compositions, sculptures and plans, provided the conditions set out in the Act have been met, namely:

1. a work must be original, in that it involves some intellectual effort or skill;
2. the author was at the date of the making of the work a citizen of, or a person ordinarily resident in, Canada.

Generally, copyright lasts for the life of the author, the remainder of the calendar year in which the author dies, and for 50 years following the end of that calendar year. Therefore, protection will expire on December 31st of the 50th year after the author dies. 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.

Considerations: Registering Copyright

Although copyright arises *automatically* when an artistic work is *fixed in a material form*, registering a copyright provides certain legal advantages and benefits in Canada:

1. a copyright certificate is proof of the owner’s rights in a case of copyright infringement in court proceedings; and
2. a copyright owner can seek certain monetary remedies, an accounting of profits, a permanent injunction, an order to deliver all infringing materials, or can elect to recover “statutory damages” of up to CDN \$20,000 per work infringed.

The Copyright Office is not responsible for policing or checking on registered works. (Note that a certificate of copyright registration does not guarantee that the legitimacy of ownership or the originality of a work will never be challenged.)

How To Apply For Registration

A. The Application

The application registration can be accessed through the Canadian Intellectual Property Office (CIPO) e-portal at: https://www.ic.gc.ca/app/scr/opic-cipo/da-cpr/depot-filing/connexion-login_eng.htm (log-in required). The applicant must include several pieces of information, which are discussed in detail below.

I. The Title

The title must be included in the application, and be able to identify a single work, but should not include descriptive matter that does not constitute a part of the title. If the work is published in a series or in parts, a single application for the whole work is sufficient.

II. Category of the work

The application must specify the category of the work. The “artistic work” category for example, includes paintings, drawings, maps, charts, plans, photographs (photo-lithograph and any work expressed by any process akin to photography), engravings (etchings, lithographs, woodcuts, prints and other similar works), illustrations, sketches, sculptures (a cast or model), works of artistic craftsmanship, architectural works (meaning buildings or structures or any model of a building or structure) and compilations of artistic works.

A work will constitute a compilation when it results from the selection or arrangement of literary, dramatic, musical or artistic works or parts thereof, or a work resulting from the selection or arrangement of data. Also, a compilation containing two or more of the categories of literary, dramatic, musical or artistic works is considered a compilation of the category making up the most substantial part of the compilation.

III. Publication

If a work is published, the date and place of *first publication* must be included in the Application. “Publication” is considered to include circumstances such as:

- a. making copies of a work available to the public;
- b. constructing an architectural work (building or structure or any model of a building or structure); or
- c. incorporating an artistic work into an architectural work.

“Publication” is not considered to include:

- a. distributing photographs/engravings of sculptures or architectural works;
- b. exhibiting an artistic work in public;
- c. performing an artistic work in public; or
- d. communicating an artistic work to the public by telecommunication.

IV. Ownership

The application must include the name and complete mailing address of the owner of the copyright. If more than one copyright owner, any additional names and addresses must also be included in the application.

The copyright owner is usually the author of the work, but can also be the employer of the author or any other person (individual or other legal entity) that has obtained ownership through a transfer of ownership such as an assignment.

V. Author

The name of the author – typically, the individual who created the work – should be named as author of the work should be included on the application, although the complete mailing address of the author is optional.

If there is more than one author, additional names and addresses can be included, and if the author is deceased, the date of death should be included in the application, if it is known.

VI. Declaration

The application must contain a declaration that the person who is applying to register the copyright is one of:

- a. the author of the work;
- b. the owner of the copyright in the work;
- c. an assignee of the copyright; or
- d. a person to whom an interest in the copyright has been granted by licence.

VII. Filing the Application Form and Filing Fee

To obtain a registration of copyright, a copyright owner must file an application with CIPO, accompanied by the appropriate fee. The application can be filed electronically, by mail, or by facsimile.

The fee for filing the Application electronically is CAD\$50, while the fee for filing by any other method is CAD\$65. Once copyright is registered, no further fees are required to maintain the registration.

CIPO does not review or assess works in any way and requires a copy of the work be filed with the Application.

Protecting Copyright After Registration

A. The Copyright Symbol

Although Canadian copyright law does not require a copyright owner to mark a work with the copyright symbol (©), the use of the copyright symbol serves as a general reminder to the world that the work is protected by copyright. We recommend that the copyright symbol be used with all work. A copyright symbol should be accompanied by the *name of the copyright owner, and the year of first publication.*

It should be noted that a copyright owner may still use the copyright symbol even if the work is not registered. Additionally, although Canadian copyright law does not make the use of a copyright symbol mandatory, certain other jurisdictions (including the United States) do require it.

B. Assignments and Licenses

An assignment occurs when a copyright owner transfers part or all of their rights to another party for the whole term of the copyright or for a certain part of it. A licence allows the copyright owner to retain ownership of the copyright, while allowing someone else to use the work for certain purposes and under certain conditions.

Should a copyright owner choose to assign or licence the copyright interest, such an assignment or license can be registered with CIPO by filing the original agreement or a photocopy of it, along with the prescribed fee for each work affected by the assignment or licence. A copyright owner can submit a request online or by mail or facsimile. CIPO will retain a copy of the documentation and return the original documentation along with a certificate of registration.

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