Copyright 101

More than just making copies.

Building a prosperous and innovative Canada
Agenda

• What is Copyright?
• Conditions for Protection
• Subject Matter
• Authorship
• Infringement
Brief history of copyright
Brief history

CONSTITUTION OF CANADA.

THE BRITISH NORTH AMERICA ACT, 1867;

VI. DISTRIBUTION OF LEGISLATIVE POWERS.

Powers of the Parliament.

91. It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and House of Commons, to make Laws for the Peace, Order, and good Government of Canada, in relation to all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater Certainty, but not so as to restrict the Generality of the foregoing Terms of this Section, it is hereby declared that (notwithstanding anything in this Act) the exclusive Legislative Authority of the Parliament of Canada extends to all Matters coming

What is Copyright? Protection Subject-Matter Authorship Infringement
Canadian Intellectual Property Office (CIPO) mandate

- Examine and grant intellectual property (IP) rights
- Provide quasi-judicial function for trademarks and patents
- Raise awareness for the effective use of IP
- Share IP information to support innovation
- Represent CIPO internationally and support Canadian interests in foreign markets.

- Gain a better understanding on the importance of protecting their brand, innovation, creation/invention through IP.
- Understand that IP is an intangible asset that can provide a business with a sustained competitive advantage in the marketplace.
- Understand the critical differences between patents, trademarks, industrial designs, copyright, and trade secrets.

What is Copyright? Protection Subject-Matter Authorship Infringement
What is Copyright?

• Put simply: **copyright = the right to copy a work**

• More accurately: copyright is an exclusive “bundle of rights”

• Also involves “neighbouring rights”

• Consists of **moral rights** and **economic rights**
Subject matter

- There are 4 different kinds of "works":
  - Artistic
  - Literary
  - Musical
  - Dramatic
Conditions for Protection

1. The work must be “original”

2. The work must be an “expression”, and not merely an idea

3. The work must be in a “fixed” material form
Originality

• Copyright applies only to original works

• Test for originality:
  1. Not a mere copy
  2. Skill and judgment
  3. More than trivial skill and judgment

• Examples:
  • Summaries
  • Typographical corrections

Source: https://nypost.com/2016/03/12/infamous-botched-jesus-painting-now-a-major-tourist-attraction/
Idea v Expression dichotomy

• Copyright protects expressions and not ideas.

• Example:
  • Jungle book
  • Recipe book

• However if a lot of your ideas have been copied, then you can argue that your expression has been copied
  • Robinson v Cinar (SCC, 2013)
Idea v Expression dichotomy

Robinson v Cinar (2013, SCC)

- Many elements of the show were similar
  - Similar titular characters
  - Secondary characters shared personality traits
- Dissimilarities
  - Secondary characters mostly animals in Curiosity

Fixation

- Work must be “fixed” in a material format
- Fixed formats:
  - Paper
  - Video recordings
  - Audio recordings
  - Hard drives / memory cards
- Non-fixed formats
  - Spoken words
- Unclear:
  - RAM in a computer
  - VOIP
Artistic Works

- An artistic work can fall into a specific category of artistic work OR
- Be a “generic work of art or artistic craftsmanship”

Includes:
- Paintings
- Drawings
- Sculptures
- Photographs
- Maps
- Charts
- Plans
- Engravings
- Architectural plans
Artistic Works

Other examples of **artistic works that have been recognized**:
- plans and sketches for machinery or buildings;
- logos of distinctive design;
- advertising material;
- tombstones;
- drawings of comic strip characters;
- photographs and content on a webpage;
- knitting patterns;

- Works of artistic craftsmanship

- Excludes:
  - Utilitarian and functional works
  - If more than 50 articles – consider industrial design protection.
Literary Works

- Generally, works expressed in print OR writing
- Also includes tables, and compilations of literary works
Literary Works

Traditional Literature:
• Novels/ Short stories/Poems/Biographies

Business Documents:
• Instruction manuals
• Business letters
• Contracts
• Text on packaging

Excluded:
• One or short-worded titles, i.e Exxon
• Historical facts
Tech-based works, such as computer programs and electronic databases, are also considered literary works.

Why?
- Consist of a series of instructions written in source code.
Musical Works

“any work of **music or musical composition**, with or without the words”

A **sound recording** is one way through which a musical work can be expressed, in addition to print and writing.

If you own copyright to a musical work you have the exclusive right to the **public performance** of the work.
Dramatic Works

- A dramatic work can fall into a specific category of dramatic works
  OR
- be a general dramatic work

Includes any work of
- Performance art;
- Choreography;
- Mime;
- Acting;
- Operas;
- Cinematography;
- Compilation of dramatic works
Neighbouring Rights

• Also commonly called “Related Rights”

• Generally, provide the right to be fairly paid

• Do not apply to “works”

• Cover individuals auxiliary to the creation of “works”

• Different in kind from traditional copyrights
The Author as 1st Owner

- The author will *always* remain the author of a work they create

- But, will *not always* be the owner of the work

  - 2 basic ways of becoming a copyright owner:
    - **Authorship** OR **Buy the rights**
Authorship

Must be a human?
• Corporations
• Ghosts
• Animals
• Computer aided/generate
Joint-Authorship

- Work produced by 2 or more authors
- One copyright for whole work; none of the authors enjoys an exclusive right to it
- Unlike “collective works” – where different works are assembled
- Contribution of one author can’t be distinct from that of the other(s)
Exceptions

• Author always remains the author of the work, BUT will not always remain the owner, OR be the 1st owner

• Examples:
  • Copyright in employment
  • Crown copyright
  • Contractors (more often than not)
Moral Rights

- Not concerned with economic interests

- Cannot be sold, but can be waived

- Canadian system recognizes three moral rights

- Michael Snow and the Eaton Centre’s “Canadian Geese in flight”
What is Copyright Infringement?

Two types of infringement:

**Copying without permission:** the act of copying a copyright-protected work without the author’s permission,

OR

**Substantial copying:** copying a substantial part of the work without the author’s permission.
What is Copyright Infringement?

These 2 Photographers Never Met, But They Took the Exact Same Photo

By Rafi Letzter, Staff Writer  |  March 9, 2018 07:21am ET

Source: https://www.livescience.com/61970-photo-wave-coincidence.html
What is Copyright Infringement?

Primary Infringement:
- Acts to which the owner has the exclusive rights
- Reproducing, copying, etc.

Secondary Infringement:
- Acts which are related to infringement, typically after an infringing copy has been created
- Selling, distributing, etc.
- “Knows or should have known” - does not require knowledge you are selling infringing copies.
- Potential criminal liabilities

Authorizing Infringement:
- To authorize others to do acts to which the owner has exclusive rights without the owner’s permission
Conditions for Protection – Registration?

- Copyright is **unlike any other IP right** in Canada

- **Why?**
  - **Automatic;** registration is **just an option** and not required

- Fees for Registration in Canada
  - **Online:** $50
  - **Any other means:** $65
Terms of Protection

Copyright + Moral Rights

• Life of Author + **50 years**
  • Subject to extend under the USMCA to life + **70 years**
  • Non-dramatic cinematographic work or compilation: **50 years**

• Neighbouring Rights:
  • Sound recording: **50 years**. If published before expiry - then 70 years or 100 years from first fixation.
  • Performer’s performance: **50 years**, unless fixed in sound recording.
  • Communication signals: **50 years**.
Some considerations

• Defenses/exceptions
  • Fair Dealing doctrine
    • Purpose
    • Fairness
  • User-generated content

• Statutory damages.
Industry and Partnership Services

IPS supports collaboration between companies and other partners and the University’s researchers

- Identify and negotiate with potential partners
- Leverage public funding with external capital and expertise
- Provide advice regarding management of IP (commercialization)
- Structure a suitable arrangement

Office of the Vice-President (Research and International)

- Carleton Office for Research Initiatives and Services (CORIS)
- Carleton International
- Office of Research Ethics
- Research Communications

4th Floor, Arise Building, x3570
ips@cunet.carleton.ca
https://carleton.ca/ips/
How Industry and Partnership Services can help

- Confidentiality, Research, IP Agreement to protect IP ownership
- Identify and Evaluate Discoveries
  - Identify opportunities for innovation transfer and commercialization.
  - Researcher(s) complete a Disclosure Form and request a meeting.
- Promote innovations on- and off-campus
- Conduct IP assessment and recommend IP strategy (patent, trademark, copyright, etc)
- Conduct Market Assessments and identify potential partners
- Develop a commercialization strategy (licensing or assignment) and ensure your IP strategy is aligned with market assessment
- Analyse commercialisation options (Licensing or assignment)
- Assist with patent prosecution and maintenance (due dates)

Contact Dr. Theresa White, Manager- Contracts and Innovation Transfer
theresawhite3@cunet.carleton.ca
CIPO and Carleton collaboration

- Virtual office hours
- Available for meetings

- Webinars on IP-related topics
  - Organised by IPS (or any other groups)
  - Invited guest

- Role of the IP advisor
  - Also, what I will not provide
Questions on Copyright?

If I have a Question on Copyright Registration(s) and Applications to Register?
  • Canadian Intellectual Property Office

If I have a Question on Copyright Tariffs and Tariff Proceedings?
  • Copyright Board of Canada

If I have Any Other General Copyright Query?
  • Department of Canadian Heritage’s Copyright Policy Branch
Carleton resources on copyrights

• Copyright for researchers, students and staff
  • Copyright Definitions and FAQ
    • Fair dealing
    • Copyright ownership
    • Licensing
    • Etc…

• copyrights@carleton.ca

• For any questions on copyright at Carleton:
  • Valerie Critchey (Librarian): valerie.critchley@carleton.ca
Contact CIPO

Canada.ca/ip-for-business

Client Service Centre
Phone: 1-866-997-1936

In-person meetings by appointment
Canadian Intellectual Property Office
Place du Portage I
50 Victoria St., Room C-229
Gatineau, QC K1A 0C936

IP Advisor, National Capital region
Caroline Lefebvre – caroline.lefebvre@canada.ca

Find more programs and support for Canadian businesses and innovators at Canada.ca/business

Other CIPO events: Search “CIPO calendar of events”
CIPO IP Resources

IP for Business
Tools and information you need to better acquire, manage and leverage your IP assets.

Includes:
- IP Toolkit
- Doing Business Abroad Guides
- IP Videos
- Case Studies
- IP game and Interactive tools

Canada.ca/ip-for-business

IP Academy
Suite of seminars and training services for businesses.

Includes:
- Seminars & webinars
- IP boot-camps
- Search-a-thons
- Case studies
- Custom training programs

Canada.ca/ip-academy
https://form.simplesurvey.com/f/I/IPAE