

Tony Wilson



Copyright

In my previous column, I wrote about trademarks. This issue, I will discuss copyright.

People mix up trademarks, copyright, and patents all the time.

Trademarks are words or symbols that designate someone's *brand*, like the IBM initials, Apple logo, or the Nike swoosh.

A **patent** is an exclusive monopoly, given to an inventor for 20 years to commercially exploit an original invention.

A **copyright** is simply the right to copy a *work*. It applies to the following types of works.

1. Literary works, such as books, stories, poetry, text, as well as computer programs
2. Dramatic works, such as films, DVDs, theatrical plays, and screenplays
3. Musical works, such as songs, with and without lyrics
4. Artistic works, such as paintings, drawings, photographs, sculptures, and architectural works—even maps

The owner of copyright (who is not necessarily the original creator) has the right to prevent another party from making copies of that work. At its most basic, that's all it is. Of course, it's more complicated than that, which is why there are numerous textbooks, cases, case comments, and legal articles on the topic. What I hope to do here is give you a basic understanding of copyright.

The origin of copyright is an English Act, the *Statute of Anne* of 1710.

Copyright is creature of statute, not common law. The origin of copyright is an English Act, the *Statute of Anne* of 1710. With the creation of the printing press, printers were essentially *stealing* the literary works of writers and other creators and selling those works in book form without compensation to authors. Indeed, many authors were left destitute despite the large profits being made by printers and publishers for the authors' works. That is reflected in the preamble to the Statute.

The *Statute of Anne* gave the creators of an original work a monopoly to control that work for a finite period of time, after which time the work would

fall unto what was eventually called the *public domain* and could be copied and exploited by anyone.

The statutory framework for copyright in Canada is the *Copyright Act*, R.S.C. 1985, c.C-42, as amended. There have been a number of amendments to Canada's *Copyright Act* since it was first enacted in 1921; many of the amendments extended the term of the copyright in certain circumstances.

Currently, copyright in Canada for a literary work extends for 50 years after the death of the author. Thus no royalties (or other compensation) are payable to the heirs of Shakespeare, Homer, or Jane Austin, even though their works are still very much in print. That is because the authors have been dead for more than 50 years and their works have fallen into the public domain.

With the advent of technology, copyright extends to other matters such as these.

1. Sound recordings such as LPs, CDs, VHS, DVDs, and Blue Ray
2. Communication signals (the electronic signals transmitted by broadcasters)
3. Performances by actors, singers, dancers, musicians, and so on

Copyright can be complicated. Some rights derive from other rights, and there are separate rights you would not expect to be separate. For example, when you load a CD into your car stereo, there is a copyright in the device (the CD itself) and also a copyright in a song. The recording of a song is one right; the song itself is another. They could be owned by different parties. I tend to think of copyright as a pie, where the various neighbouring and overlapping rights that could be held by performers, writers, musicians, broadcasters, and DVD manufacturers and distributors are sliced up, as a pie can be.

When someone *owns* copyright, the *Copyright Act* gives the owner the rights to use and commercially exploit those rights. But bear in mind that many originators of artistic, literary, musical, or dramatic works *no longer own the works they have created*. Why? They have assigned their rights to publishers, music companies, film production companies, and other businesses that require ownership of the copyright to commercially exploit the *product*.

Authors and creators—unless they're successful and economically very powerful—will have assigned copyright to see their manuscript in print, hear their song on the radio, browse for their novel in a bookstore, or see their screenplay on the screen. The commercial world essentially requires many authors and creators of works to assign those works for commercial exploitation.

Ownership of the copyright in a work includes a number of other rights you might not expect. For example, it includes the following.

1. The right to convert a dramatic work into another kind of work, such as a novel
2. The right to convert a novel into a dramatic work
3. The right to publish a translation of a work
4. The right to make a sound recording (such as an audio book) of a dramatic, musical, or literary work

5. The right to reproduce, publicly present, and adapt a film
6. The right to broadcast the work on TV or cable
7. The right to license computer programs

Copyright has its limitations, though. It applies to songs, novels, plays, magazine articles, computer programs, and so on, but does not apply to plots or characters in a novel, factual information, the idea for a plot for a novel, the title to a song, or works that are in the public domain—the book *Pride and Prejudice*, for example, nor will it protect the name of a television show, book, or movie, although those might be protected through trademark law.

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Even in a fitness studio.**

Copyright arises on creation of the work, not on registration of the work under the *Copyright Act*. How do you prove **when** a work has been created? Many novelists and screenwriters simply mail a copy of the work to themselves; the postmark proves the date of mailing. Why not just register under the Act and give notice to the world?

Someone who uses a copyrighted work **without consent** is said to be *infringing* on the owner's copyright. Infringement is actionable under the *Copyright Act*.

Infringement of copyright includes

- the public performance of a theatrical play without the consent of the owner of those rights;
- photocopying articles for distribution to students at a university or school without the consent of the owner of those rights;
- video-recording a concert without the consent of the owner of those rights;

- the mere reprinting of an article without the consent of the owner.

Even the use of background music in an aerobics studio or a restaurant is subject to copyright; someone else's music cannot be played without consent. Restaurateurs, bar owners, and fitness studio operators sometimes are surprised to learn they are required to pay a rights collective, like SOCAN or NRCC, an annual tariff based on a formula derived from the number of seats in their establishments or the number of members in their fitness clubs.

But that's the law. And frankly, why shouldn't artists be paid for the use of their work in public? Even in a fitness studio.

There are certain exceptions to infringement, such as the private performance of another person's song in your house or making a copy of a musical recording for private use. *Fair dealing* allows people to quote works from books, articles, and other works for private study or research or for criticism, review, or news reporting.

Remedies for infringement under the Act may be limited unless the copyright is actually registered. An easy, straightforward copyright process is to access the Website of the Canadian Intellectual Property Office (www.cipo.ic.gc.ca) and fill out the forms.

A discussion of copyright must include the issue of *moral rights*. The creator of a work, even though he or she may have sold copyright of a work, still maintains a moral right to the work, to prevent the work from being distorted, mutilated, or otherwise modified in a way that is prejudicial to the reputation of the work or the creator.

A case in point comes from over 25 years ago when sculptures of Canada geese—an artistic work hanging in the Eaton's Centre in Toronto—were adorned with Christmas decorations and Santa hats. The artist had sold the geese sculptures to the Eaton's Centre, but the artist objected to having

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Christmas decorations on the work and successfully sued, based on an infringement of his common law moral rights. Moral rights are now part of our *Copyright Act*. Moral rights cannot be assigned, but they can be waived. And most assignments of copyright include a provision for the waiver of moral rights.

Finally, you should be aware that every country has different laws governing copyright. The number of years that copyright is protected will differ, depending on the work and the country. The American Congress has recently extended copyright protection for certain works—such as Mickey Mouse!—in the statute called *The Sonny Bono Copyright Term Extension Act*, to as much as 120 years after creation! This was sought by the US film industry, particularly the Walt Disney Company, to prevent Mickey Mouse from falling into the public domain. Canada has not adopted such measures.

Copyright is a complicated area, despite this attempt to simplify it. Lawyers do not deal with it on a day-to-day basis, unless of course they are trained in copyright law as a regular component of their practice. The more indepth information on the CIPO Website (www.cipo.ic.gc.ca) and the SOCAN site (www.socan.ca) will assist anyone interested in copyright more than this article can. ▲

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