

**Please note: the information provided is of a general nature only, and the provision of it does not constitute legal advice, nor does it create a solicitor-client relationship. The reader should seek advice from a lawyer pertaining to any particular fact situation.**

© 2014 Jeananne Kathol Kirwin of [Kirwin LLP](http://www.kirwinllp.com). Do not copy or distribute without permission.

**1. How do I protect my copyright?**

Copyright in a “work”, including a literary work, arises simply by virtue of the creation of the work. The creator of the work is the first owner of copyright in the work (with some exceptions, such as employment). The copyright owner could protect the copyright by marking all copies of the work with the © symbol, adding the year of creation (or publication, if published), and the owner’s name; this is called the copyright claim. The copyright owner could go further and register the copyright in the work at the federal Copyright Office. This is simple and inexpensive (\$50 per work). See [www.cipo.ic.gc.ca](http://www.cipo.ic.gc.ca) and click on “Copyright” under the programs and services menu.

**2. I have an idea for a story. How do I prevent it from being stolen?**

There is no copyright in an idea. There is only copyright in the expression of the idea. Therefore, the best way to prevent an idea from being stolen is to keep it secret, and to protect all expressions of the idea by marking them and/or registering them. See the answer to question 1.

**3. What should I look for (or look out for) in a publishing contract?**

A publishing contract is a complex agreement with many provisions. Consult a lawyer well-versed in this area for specific advice. From the author’s point of view, the most important provisions are those relating to copyright ownership, and reversion of rights at the termination of the contract. See the answers to questions 4, 5, 6, 7 and 8.

**4. What does it mean if a publisher asks for “first rights”?**

The publisher is asking to be the first to publish your literary work, allowing the writer the freedom to publish it elsewhere once the first publication of the work has appeared.

**5. What does it mean if a publisher asks for “exclusive rights”?**

This is a vague term, but likely means that a publisher wants all rights linked to your literary work. Consider copyright to be a bundle of rights with many strands, rather than a single right. A typical bundle of rights in relation to a literary work consists of the right to publish the work, to

translate it, to turn it into a cinematographic work, and so on. If a publisher requests exclusive rights, it is probably asking for the entire bundle of rights, not just some of them such as publication and translation rights.

**6. What other rights may a publisher ask for?**

Other commonly requested rights are “electronic rights” which a lawyer will counsel you to resist, and yet these are so commonly requested that relatively novice authors will not likely be able to negotiate these. The term when first used was extremely vague, but as technology evolves is almost certainly understood by publishers to include e-book publishing rights.

**7. How can I make sure a publisher is not asking for my copyright?**

The publishing contract should contain a provision whereby the author “grants the publisher the right to publish the work”, etc. If it contains a provision whereby the author “assigns to the publisher all of his/her rights in the work”, then that would be a transfer of copyright, something to be avoided.

**8. What are moral rights? Are these different from copyright? Can a publisher ask for moral rights?**

Moral rights are different from copyright, explained in the answer to question 5 as a bundle of rights. Moral rights aim to protect a creator’s non-economic interests in his or her work. Generally it is recognized that the following moral rights exist in Canada:

- Right of paternity – the right to have the author’s name on the work, to use a pseudonym, and to remain anonymous
- Right of integrity – the right to prevent another from changing the work in such a way that it would be prejudicial to the creator’s honour or reputation
- Right of association – the right to prevent someone else from using the work in association with a product, service, cause or institution

A creator cannot sell or assign his or her moral rights to anyone, but can waive them in favour of a publisher. Some publishing contracts contain a provision whereby the author waives his or her moral rights, and a lawyer will caution against signing any such waiver.

**9. My writing is going to be published in another country. Does Canadian copyright law still apply?**

Canada is a signatory to the major copyright law conventions of the world. Generally speaking, therefore, Canadian copyright laws will be enforceable in the countries which are also signatory to the conventions, and this would include most of the world. For more specific advice about the law in a particular country, it is best to consult a lawyer.

**10. My writing is being used/reproduced/distributed without my permission. What can I do about it?**

The author or other owner of copyright material subject to infringement should send a cease-and-desist demand letter to the infringer. If the infringement continues, then the owner may elect to bring a lawsuit for copyright infringement. If the copyright is registered at the federal Copyright Office, such a legal action will be much simpler and easier to enforce.

**11. Do I need permission to use another author's work in my writing? What if it is a quotation with credit given?**

Copyright in a work subsists for the life of the author, plus 50 years. Assuming the author of a work is alive or has not been deceased for 50 years, then the permission of that author or other owner to the use of that work must be sought and obtained. There are exceptions to this rule, such as research and private study, review, satire and parody, and more recently, educational purposes. These exceptions are broadly referred to as fair dealing. The user of work in which copyright continues to subsist should seek a lawyer's opinion before assuming fair dealing applies. Even if fair dealing applies, attribution may well be required.

**12. I will be conducting interviews as research for my writing. What do I need to know about the legalities of using interviews as source material?**

The written permission of the interviewees should be obtained before interview material is used. The law respecting privacy rights is still developing and great caution should be exercised in using interview material.

**13. My writing is based on real life events. How do I protect myself from being sued?**

The creator of non-fiction literary works should always be mindful of defamation laws, specifically libel in the case of written works. Defamation is a complex area of law, and so the basic premises that "truth is an absolute defence" should not be relied upon. The creator and his or her publisher should obtain legal advice before publishing non-fiction works that could be perceived as reflecting adversely upon another person, or as depriving a person of his or her right to privacy.

**14. Who holds the copyright of a translation—the author or the translator?**

Translations are considered an original literary work. This is because the translator uses his or her own independent labour, knowledge, skill and judgment to do the translation work, and is therefore the author and copyright owner of his or her translation. However, this is "without prejudice" to the rights of the owner of the copyright of the work being translated. Practically speaking, this means that if someone holds a copyright in the work being translated, that person holds the sole right to publish any translations. To publish a translation without the permission of the owner of the work being translated would be an infringement of the latter person's

copyright. For further certainty and to avoid any confusion, permission to make and publish the translation and the issue of who owns the copyright to the translation should be addressed in a written agreement.

**15. Who holds the copyright of a work written by a ghostwriter?**

Based on the principle that a creator of a work is the first copyright owner, the ghostwriter would normally be the copyright owner of a biography or autobiography. The written agreement or writing contract between the ghostwriter and the individual whose story is being told should address this matter, however, and in many cases copyright ownership is shared in some manner.

**16. Who holds the copyright of a work that is a collaboration of more than one author?**

Based on the principle that a creator of a work is the first copyright owner, all of the creators would be assumed to be copyright owners in the collaborative work. Sometimes such collaborations qualify as compilations, and specific rules apply to those. In any case, the collaborators should enter into a written agreement that addresses the matter of copyright ownership. In many cases copyright ownership is shared in some manner.