

COPYRIGHT PRIMER PART 1:

Protecting your copyright

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This information is of a general nature only. It does not constitute legal advice or create a solicitor-client relationship. The reader should seek advice from a lawyer pertaining to any particular fact situation.

As part of a project to update the Writers' Guild of Alberta (WGA) website, I revisited the Intellectual Property FAQ page. While brevity is a virtue on any FAQ page, this column is a venue for more expanded explanations. In the next few *Write/Right* columns, I will focus on and update questions appearing on the WGA's FAQ page.

Here is the first set of questions, all related to copyright protection:

1. How do I protect my copyright?
2. I have an idea for a story. How do I prevent it from being stolen?
3. I will publish my writing in another country. Does Canadian copyright law apply?

Copyright applies in Canada to protect creations, or works, that are

- Original,
- Fixed in a material form,
- Literary, musical, dramatic and/or artistic (as well as performers' performances, sound recordings and communication signals), and
- Created by a person who is a citizen or subject of, or ordinarily resident in, Canada or any country which is a member of the same treaties to which Canada belongs.

Copyright does not apply to

- Creations that do not meet the above criteria, such as works that are not fixed or that do not require any skill or judgment to create,
- Ideas,
- Facts, and
- Short titles.

Copyright protects an eligible work the moment it is created and fixed. Registration is not required. Since Canada belongs to international treaties such as the Berne Convention, the Universal Copyright Convention and the World Intellectual Property Organization (WIPO) Copyright Treaty, works protected by copyright laws in Canada are automatically protected by the laws in all countries that are treaty signatories, just as if those works were created in those countries.

Although registration is not required, it is recommended. A certificate of copyright registration is evidence that copyright exists, and that the person shown as the owner indeed owns the copyright. This can be useful in a future infringement situation. The certificate acts to reverse the onus of proof in infringement litigation so that the defendant must disprove the copyright's existence and ownership of the work in

question. The certificate of copyright registration also proves that the defendant could not have been an "innocent infringer," since the work appears on a public and searchable register. Generally, courts award lesser penalties against innocent infringers.

Copyright registration is simple and inexpensive. In Canada, copyright can be registered for a government fee of \$50 online at canada.ca/en/services/business/ip/copyright.html.

Since no single international copyright registration system exists, creators could rely upon the international treaties and conventions to which Canada belongs to protect their works in other countries. However, if it is anticipated that a particular copyright work will be marketed or made available in a specific country, registration in that country is recommended. Copyright can be registered in the United States, for example, for a government fee of \$45 (USD) online at copyright.gov/.

Another way to protect copyright for both registered and unregistered works is to use the copyright symbol ©. Although Canadian law does not require such marking to protect the work, use of the © symbol is recommended for a few reasons:

- It acts as an educational tool and deterrent to infringement, letting the

uninformed know that creative work cannot be freely copied.

- If the symbol were used in connection with a work that is later infringed, the owner could assert in a lawsuit that the defendant could not be an innocent infringer.
- Some jurisdictions require the © symbol. Therefore, using it would protect the work in those jurisdictions.

To properly claim copyright, use the © symbol, followed by the year of creation, or if published, the year of first publication, and the owner's name.

With this by way of background, here are the three FAQ page questions and their answers:

HOW DO I PROTECT MY COPYRIGHT?

Copyright in a “work,” including a literary, musical, dramatic and/or artistic work, arises by virtue of creation, provided it is original and fixed, and so long as it is not merely an idea, fact or short title. Although not required by law, copyright could be protected two ways:

- 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.
- By registering copyright in the work in Canada at the federal Copyright Office. This is simple and inexpensive. Copyright can also be registered at copyright offices in other countries.

I HAVE AN IDEA FOR A STORY. HOW DO I PREVENT IT FROM BEING STOLEN?

Copyright does not protect an idea. It only protects the expression of the idea, whether as a literary, musical, dramatic and/or artistic work. Copyright protects only fixed works, not unrecorded verbal descriptions. Therefore, the best way to prevent an idea from being stolen is to keep it a secret. If a story idea is disclosed, it should be in writing and marked with the copyright claim. The creator could

go further and register the work at the federal Copyright Office. In summary, a creator cannot control the actions of others and cannot prevent theft. However, a creator can take steps to protect their works.

I WILL PUBLISH MY WRITING IN ANOTHER COUNTRY. DOES CANADIAN COPYRIGHT LAW STILL APPLY?

Canada is a signatory to the major copyright law conventions of the world. Generally,

therefore, the rights of authors and copyright owners protected by Canadian copyright law must be recognized by the other signatory nations which are also treaty members, just as if the work was covered by the law of the treaty member's country. For more specific advice about the law in a particular country, it is best to consult a lawyer. ■

Jeananne Kirwin, Q.C., a lawyer in Edmonton, practices in the areas of intellectual property and corporate/commercial law with an emphasis on trademark and copyright registration and enforcement (kirwinllp.com).