

Copyright & Trade-mark FAQ

1. What is copyright?

Copyright is a bundle of rights that protect a creative work. It's the exclusive right to copy the work or allow someone else to do so. It includes the sole right to publish, produce or reproduce, to perform in public, to communicate, and to translate the work.

2. What kinds of works are covered by copyright?

Copyright protects all original literary, dramatic, musical and artistic works. These could be books, other writings such as e-mails and business proposals, musical compositions, sculptures, paintings, photographs, films, plays, television and radio programs, and computer programs. Copyright also applies to sound recordings, performer's performances and communication signals.

3. What types of things are not covered by copyright?

Ideas themselves are not protected by copyright. Copyright protects someone's expression of an idea, but not the idea itself. As well, business names and other short-word combinations are not covered.

4. What do I have to do, to get a copyright?

Nothing. Copyright protection is automatic. However, it's a good idea to indicate your ownership of copyright on any valuable works, and you can register the copyright, if you like.

5. Do I have to write 'copyright' on my work?

No. But it's a good idea to put a copyright notice in a prominent spot on the work so it can be readily seen, to indicate your ownership and therefore to warn other people not to copy it without your permission, showing your name and the year of first publication, using words like:

© 2008 William J. Genereux

- or -

Copyright 2008 William J. Genereux

6. Are there any benefits to registering a copyright?

Registration gives you a certificate that states you are the copyright owner. You can use the certificate in court to establish your ownership. This puts the onus on your opponent to disprove that you own the copyright. However, when you apply

to register there is no actual determination that you own the copyright, so a registration can be set aside in court.

7. How do I register a copyright, or instead, can't I just mail a copy of the work to myself?

You file an application with the Copyright Office along with a prescribed fee. Mailing to work to yourself can help to prove the date the work was in existence, due to the postmark on the envelope but otherwise is quite useless. You can also prove the date the work was in existence by other methods such as showing the date it was residing on a computer hard drive.

8. How long does a copyright last?

Generally speaking a copyright lasts for the life of its creator plus 50 years.

9. Who owns the copyright?

Generally speaking the owner of the copyright is the creator of the work. If the creator is an employee and the work was created during the course of employment then the employer owns the copyright. If the work has been commissioned (and the fee paid) and the work is a photograph, portrait, engraving or print, then the person commissioning the work owns the copyright. If the work is not a photograph, portrait, engraving or print and was created by an independent contractor who is not an employee then the independent contractor retains the copyright unless there is a written agreement to the contrary.

10. Is a Canadian copyright automatically recognized in other countries?

Generally speaking, yes. Most countries in the world adhere to international copyright treaties, conventions and organizations that reciprocate copyright protections automatically between those countries.

11. What are "moral rights" in a copyright?

Except if you're an employee who has created the work during the course of your employment, if you license or assign your work to someone else you retain so-called moral rights. This means that no one, including a person to whom you've sold the copyright, is allowed to distort, mutilate or otherwise modify the work in a way that is prejudicial to your honour or reputation. Your name must also be associated with the work as its author if reasonable in the circumstances. In addition, your work may not be used in association with a product, service, cause or institution in a way that is prejudicial to your honour or reputation without your permission. However, by written agreement, moral rights can be waived.

12. How do I stop someone from using my copyright without my permission?

Unauthorized use of a copyright is called infringement. You can send them a demand letter. If they won't stop, you'll have to sue them in court. Included in the lawsuit, you would ask for an injunction, restraining them from continuing.

13. What can I get for infringement of my copyright, or what do I have to pay if I infringe someone else's?

Generally speaking the copyright owner can opt to receive an award based on actual damages suffered, including lost profits, or prescribed statutory damage amounts.

14. Are there situations where copyright legally can be used without permission?

There are "fair dealing" provisions in the Copyright Act, which essentially state that use or reproduction of a work for private study, research, criticism, review or news reporting, is permissible.

15. What's the difference between a copyright license and a copyright assignment?

A license is permission to use the copyright where the owner retains ownership of the copyright. The license can be exclusive, meaning that the only person allowed to use the copyright is the licensee, or, it can be non-exclusive, meaning that any number of licensees may use the copyright at the same time. Exclusivity can be granted on a country by country basis. Assignment is the actual transfer of ownership of the copyright itself.

16. What is synchronization?

Synchronization or sync is the linking of musical compositions and recorded music, to films or videos. Typically the producer of a film or video gets permission from the owners of the compositions and the recordings to synchronize and therefore include them in the film or video, for a flat fee.

17. Do I need permission to play music at an event?

Yes, if you're playing music other than from the radio and it's a public performance (i.e. held at a place that's open to the public or normally rented to the public). The Society of Composers, Authors and Music Publishers of Canada (SOCAN) collects license fees from the public performance of musical compositions. You need to get a SOCAN license or make sure that the venue has a SOCAN license that also covers your event.

18. What is a trade-mark?

A trade-mark is a word, symbol, design (or a combination of those things) used to distinguish the wares or services of a person or organization from those of others in the marketplace.

19. Do I need to register a trade-mark?

Not necessarily. You get limited trade-mark rights automatically through usage of the mark. However, those rights are limited to the geographic area where you

use the mark. Also, someone can apply to register your mark for themselves and if you don't find out until after they've registered, you're likely going to go to court to get the mark registered in your name – and they'll have a presumption of ownership so it will be tough to win.

20. May I use the ™ symbol if I don't have a registered trade-mark?

Yes. You can use the ™ symbol even if you don't have a registered trade-mark, but you can't use the ® symbol unless you've actually registered the mark.

21. Why should I register my trade-mark?

If you register your trade-mark, you get a presumption of ownership. Also you get the trade-mark for the entire country, and not just for the geographic area where you use the mark. Also, registration can help you protect the mark on the Internet by making it easier to stop squatters from using domain names that include your mark.

22. Do I get rights automatically in other countries if I register my trade-mark in Canada?

No. Registration must be done on a country by country basis.

23. How long does a registered trademark-mark last?

Registration gives you the exclusive right to use the mark across Canada for 15 years, renewable every 15 years.

24. What's the difference between a trade-mark and a trade name?

A trade-mark identifies your wares or services. A trade name identifies the name of your business. The name of your business might also identify your wares and services, but not necessarily.

25. How do I register a trade-mark?

You can register it yourself or hire a trade-mark agent. It's a process that could take between about 8 to 24 months, depending on whether the application is opposed. All trade-mark applications are published for opposition, meaning that someone might find your proposed registration confusing with their registered trade-mark. In that case, you'd have to go through an opposition proceeding. If a trade-marks examiner approves the application, and it's not opposed after the application is published or you win the opposition proceeding, then you'll get your registration.