

Digital Piracy - Canadian Copyright Law: Fair Use and Fair Dealing in Canadian Law (Part 2)

By Jason Cheung (<https://digitaltattoo.ubc.ca/author/jason-cheung/>) on May 31, 2018 | Tagged with [Canada](https://digitaltattoo.ubc.ca/tag/canada/), [Content](https://digitaltattoo.ubc.ca/tag/content/), [content ownership](https://digitaltattoo.ubc.ca/tag/content-ownership/), [Copyright Act](https://digitaltattoo.ubc.ca/tag/copyright-act/), [copyright law](https://digitaltattoo.ubc.ca/tag/copyright-law/), [Creative Commons](https://digitaltattoo.ubc.ca/tag/creative-commons/), [fair dealing](https://digitaltattoo.ubc.ca/tag/fair-dealing/), [fair use](https://digitaltattoo.ubc.ca/tag/fair-use/), [legality](https://digitaltattoo.ubc.ca/tag/legality/), [open access](https://digitaltattoo.ubc.ca/tag/open-access/), [Work Ownership](https://digitaltattoo.ubc.ca/tag/work-ownership/)



In the [last part of our series](https://digitaltattoo.ubc.ca/2018/05/24/what-is-the-definition-of-piracy/) (https://digitaltattoo.ubc.ca/2018/05/24/what-is-the-definition-of-piracy/), we looked at what Piracy was, and saw that it was dependent on the legal copyright protection of works within a country. Now let's take a look at what Canadian law says about copyright and copyright protection. The Copyright Act of Canada, signed in 1921, establishes the legal boundaries of the use and distribution rights of creative and artistic works in Canada.

You can find the latest version of the Copyright Act of Canada here: <http://laws-lois.justice.gc.ca/eng/acts/c-42/> (http://laws-lois.justice.gc.ca/eng/acts/c-42/). It was last updated on June 19, 2017. In this article, we will go over what protections works have in Canada, and the Fair Dealing exceptions for copying work for research, private study, education, satire, parody, criticism, review or news reporting.

Brief History of the Copyright Act of Canada

The Copyright Act of Canada was preceded by British copyright law and the Imperial Copyright Act of 1842. It was not until Canada became a country in 1867 that the British North America Act transferred full control of legislature to the government of Canada. The first Canadian Copyright was written in 1875, and it sought to lay out the grounds for Canadian copyright laws on 'literary, scientific and artistic works or compositions', with an initial term of 28 years, as opposed to the lifetime of the creator set out in the British Imperial Copyright Act of 1842. The Copyright Act of Canada has been updated, revised, and modified a number of times throughout the years, and has been changed to include digital files, encryption, and digital re-distribution of files as well.

Protections for Copyrighted Works

What protections do works have in Canada? In Canada, copyright applies to "every original literary, dramatic, musical and artistic work". In comparison to the 28 year initial term of the 1875 version, the modern Copyright Act of Canada sets the initial copyright term as the life of the author, plus the full year of his or her death, and an additional 50 years following the author's death. In Section 6 of the Copyright Act:

"The term for which copyright shall subsist shall, except as otherwise expressly provided by this Act, be the life of the author, the remainder of the calendar year in which the author dies, and a period of fifty years following the end of that calendar year."

In addition to copyright, the Copyright Act of Canada also sets out 'Moral Rights' to works, which are defined in Section 14.1 of the Act as "the right to the integrity of the work and, in connection with an act mentioned in section 3, the right, where reasonable in the circumstances, to be associated with the work as its author by name or under a pseudonym and the right to remain anonymous". This provides copyright owners with a peace of mind that their work won't be adjusted slightly and cheapened by similar knock-offs.

Fair Dealing Exemptions

Fair Dealing is an exception in the Canadian Copyright Act that outlines the permitted unauthorized use of copyrighted materials for specific, mandated purposes. In Canada, these purposes include: research, private study, education, parody, satire, criticism, review, or news reporting. For research and private study, education, parody and satire, no special requirements are required. For criticism, review, and news reporting, the source and author must be named to constitute fair dealing. The Copyright Act of Canada, Section 29 says the following:

Research, private study, etc.

s.29 Fair dealing for the purpose of research, private study, education, parody or satire does not infringe copyright.

Criticism or review

s.29.1 Fair dealing for the purpose of criticism or review does not infringe copyright if the following are mentioned:

- (a) the source; and
- (b) if given in the source, the name of the
 - (i) author, in the case of a work,
 - (ii) performer, in the case of a performer's performance,
 - (iii) maker, in the case of a sound recording, or
 - (iv) broadcaster, in the case of a communication signal.

News reporting

s.29.2 Fair dealing for the purpose of news reporting does not infringe copyright if the following are mentioned:

- (a) the source; and
- (b) if given in the source, the name of the
 - (i) author, in the case of a work,
 - (ii) performer, in the case of a performer's performance,
 - (iii) maker, in the case of a sound recording, or
 - (iv) broadcaster, in the case of a communication signal.

Flipping the Table: What Copyright Protection Does Canada Provide for Your Works?

The government of Canada has made a [guide for copyright](http://www.ic.gc.ca/eic/site/cipointernet-internetopic.nsf/eng/h_wr02281.html?Open&wt_src=cipo-cpyrght-main&wt_cxt=apply#preparingApplicationRegistration) available to the public. In the guide, they mention that the Canadian Copyright Act **automatically** protects all published work by a creator. However, in copyright disputes, registered (and certified) copyrights are recognized by the Act as the legal owner of a work. In section 2.2 of the Copyright Act, it defines a 'published work' as:

- **2(1)**For the purposes of this Act, *publication* means
 - **(a)**in relation to works,
 - **(i)**making copies of a work available to the public,
 - **(ii)**the construction of an architectural work, and
 - **(iii)**the incorporation of an artistic work into an architectural work, and
 - **(b)**in relation to sound recordings, making copies of a sound recording available to the public,

but does not include

- **(c)**the performance in public, or the communication to the public by telecommunication, of a literary, dramatic, musical or artistic work or a sound recording, or
- **(d)**the exhibition in public of an artistic work.

It is also noteworthy to mention that the Canadian Copyright Act also protects works created and published by anonymous authors. Anonymous authors can enjoy 50-70 years of copyright protection as outlined by the act. However, these works cannot be registered copyrighted works, as registration requires authors to provide identification. The Act mentions that anonymous works are protected for whichever period is shorter:

- (a) a term consisting of the remainder of the calendar year of the first publication of the work and a period of fifty years following the end of that calendar year, and
- (b) a term consisting of the remainder of the calendar year of the making of the work and a period of seventy-five years following the end of that calendar year

Disclaimer: The views and opinions expressed in this article are those of the author and do not constitute legal or financial advice.

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