

Copyright Act

CHAPTER C-42

(as amended up to December 31, 1993)

An Act respecting copyright

SHORT TITLE

1 Short title

1.—

This Act may be cited as the *Copyright Act*. R.S., c. C-30, s. 1.

INTERPRETATION

2 Definitions

In this Act,

“architectural work” *«oeuvre architecturale»*

“architectural work” means any building or structure or any model of a building or structure;

“architectural work of art” [Repealed, 1993, c. 44, s. 53]

“artistic work” *«oeuvre artistique»*

“artistic work” includes paintings, drawings, maps, charts, plans, photographs, engravings, sculptures, works of artistic craftsmanship, architectural works, and compilations of artistic works;

“Berne Convention country” *«pays partie à la Convention»*

“Berne Convention country” means a country that is a party to the Convention for the Protection of Literary and Artistic Works concluded at Berne on September 9, 1886, or any one of its revisions, including the Paris Act of 1971;

“Board” *«Commission»*

“Board” means the Copyright Board established by subsection 66(1);

“book” *«livre»*

“book” includes every volume, part or division of a volume, pamphlet, sheet of letter-press, sheet of music, map, chart or plan separately published;

“choreographic work” *«oeuvre chorégraphique»* “cinematograph” *«oeuvre cinématographique»*

“choreographic work” includes any work of choreography, whether or not it has any story line;

“cinematograph” includes any work expressed by any process analogous to cinematography but, in section 11.1, excludes works where the arrangement or acting form or the combination of incidents represented give the work an original character;

“collective work” *«recueil»*

“collective work” means

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- (a) an encyclopaedia, dictionary, year book or similar work,
 - (b) a newspaper, review, magazine or similar periodical, and
 - (c) any work written in distinct parts by different authors, or in which works or parts of works of different authors are incorporated;

“compilation” «*compilation*»

“compilation” means

- (a) a work resulting from the selection or arrangement of literary, dramatic, musical or artistic works or of parts thereof, or
- (b) a work resulting from the selection or arrangement of data;

“computer program” «*programme.. .*»

“computer program” means a set of instructions or statements, expressed, fixed, embodied or stored in any manner, that is to be used directly or indirectly in a computer in order to bring about a specific result;

“delivery” «*débit*» “dramatic work” «*oeuvre dramatique*»

“delivery”, in relation to a lecture, includes delivery by means of any mechanical instrument;

“dramatic work” includes

- (a) any piece for recitation, choreographic work or mime, the scenic arrangement or acting form of which is fixed in writing or otherwise,
- (b) any cinematograph, and
- (c) any compilation of dramatic works;

“engravings” «*gravure*» “every original literary, dramatic, musical and artistic work” «*toute...* »

“engravings” includes etchings, lithographs, woodcuts, prints and other similar works, not being photographs;

“every original literary, dramatic, musical and artistic work” includes every original production in the literary, scientific or artistic domain, whatever may be the mode or form of its expression, such as compilations, books, pamphlets and other writings, lectures, dramatic or dramatico-musical works, musical works, translations, illustrations, sketches and plastic works relative to geography, topography, architecture or science;

“Her Majesty’s Realms and Territories” «*royaumes.. .* »

“Her Majesty’s Realms and Territories” includes any territories under Her Majesty’s protection to which an order in council made under section 28 of the *Copyright Act, 1911*, passed by the Parliament of the United Kingdom, relates;

“infringing” «*contrefaçon*»

“infringing”; when applied to a copy of a work in which copyright subsists, means any copy, including any colourable imitation, made, or imported in contravention of this Act;

“lecture” «*conférence*»

“lecture” includes address, speech and sermon;

“legal representatives” «*représentants.. .*» “literary work” «*oeuvre littéraire* »

“legal representatives” includes heirs, executors, administrators, successors and assigns, or agents or attorneys who are thereunto duly authorized in writing;

“literary work” includes tables, computer programs, and compilations of literary works;

“maker” *«producteur»*

“maker”, in relation to

(a) a cinematograph, or

(b) a record, perforated roll or other contrivance by means of which sounds may be mechanically reproduced,

means the person by whom the arrangements necessary for the making of the cinematograph or contrivance are undertaken;

“Minister” *«ministre»*

“Minister”, except in section 44.1, means the Minister of Consumer and Corporate Affairs;

“moral rights” *«droits...»*

“moral rights” means the rights described in subsection 14.1(1);

«oeuvre musicale»

“musical work” means any work of music or musical composition, with or without words, and includes any compilation thereof;

“performance” *«représentation» ...*

“performance” means any acoustic representation of a work or any visual representation of a dramatic work, including a representation made by means of any mechanical instrument, radio receiving set or television receiving set;

“photograph” *«photographie»*

“photograph” includes photo-lithograph and any work expressed by any process analogous to photography;

“plate” *«planche»*

“plate” includes any stereotype or other plate, stone, block, mould, matrix, transfer or negative used or intended to be used for printing or reproducing copies of any work, and any matrix or other appliance by which records, perforated rolls or other contrivances for the acoustic representation of the work are or are intended to be made; “receiving device” [Repealed, 1993, c. 44, s. 79]

“telecommunication” *«télécommunication»*

“telecommunication” means any transmission of signs, signals, writing, images or sounds or intelligence of any nature by wire, radio, visual optical or other electromagnetic system;

“work” *«oeuvre»*

“work” includes the title thereof when such title is original and distinctive;

“work of joint authorship” *«oeuvre créée...»*

“work of joint authorship” means a work produced by the collaboration of two or more authors in which the contribution of one author is not distinct from the contribution of the other author or authors;

“work of sculpture” *«oeuvre de...»*

“work of sculpture” includes casts and models.

R.S., 1985, c. C-42, s. 2; R.S., 1985, c. 10 (4th Supp.), s. 1; 1988, c. 65, s. 61; 1992, c. 1, s. 145(F); 1993, c. 23, s. 1, c. 44, ss. 53, 79.

2.1(1) Compilations

2.1

(1) A compilation containing two or more of the categories of literary, dramatic, musical or artistic works shall be deemed to be a compilation of the category making up the most substantial part of the compilation.

2.1(2) *Idem*

(2) The mere fact that a work is included in a compilation does not increase, decrease or otherwise affect the protection conferred by this Act in respect of the copyright in the work or the moral rights in respect of the work.

1993, c. 44, s. 54.

COPYRIGHT

3(1) Definition of “copyright”

3.—

(1) For the purposes of this Act, “copyright” means the sole right to produce or reproduce the work or any substantial part thereof in any material form whatever, to perform, or in the case of a lecture to deliver, the work or any substantial part thereof in public or, if the work is unpublished, to publish the work or any substantial part thereof, and includes the sole right

(a) to produce, reproduce, perform or publish any translation of the work,

(b) in the case of a dramatic work, to convert it into a novel or other non-dramatic work,

(c) in the case of a novel or other non-dramatic work, or of an artistic work, to convert it into a dramatic work, by way of performance in public or otherwise,

(d) in the case of a literary, dramatic or musical work, to make any record, perforated roll, cinematograph film or other contrivance by means of which the work may be mechanically performed or delivered,

(e) in the case of any literary, dramatic, musical or artistic work, to reproduce, adapt and publicly present the work by cinematograph,

(f) in the case of any literary, dramatic, musical or artistic work, to communicate the work to the public by telecommunication,

(g) to present at a public exhibition, for a purpose other than sale or hire, an artistic work created after June 7, 1988, other than a map, chart or plan, and

(h) in the case of a computer program that can be reproduced in the ordinary course of its use, other than by a reproduction during its execution in conjunction with a machine, device or computer, to rent out the computer program,

and to authorize any such acts.

3(1.1) Simultaneous fixing

(1.1) A work that is communicated in the manner described in paragraph (1)(f) is fixed even if it is fixed simultaneously with its communication.

3(1.2) Interpretation

(1.2) For the purpose of paragraph (1)(f), persons who occupy apartments, hotel rooms or dwelling units situated in the same building are part of the public and a communication intended to be received exclusively by such persons is a communication to the public.

3(1.3) Restriction

(1.3) For the purpose of paragraph (1)(f), a person whose only act in respect of the communication of a work to the public consists of providing the means of telecommunication necessary for another person to so communicate the work does not communicate that work to the public.

3(1.4) Networks, programming undertakings

(1.4) For the purpose of paragraph (1)(f), where a person, as part of

(a) a network, within the meaning of the *Broadcasting Act*, whose operations result in the communication of works to the public, or

(b) any programming undertaking whose operations result in the communication of works to the public,

transmits by telecommunication a work that is communicated to the public by another person who is not a retransmitter of a signal within the meaning of subsection 28.01 (1), the transmission and communication of the work by those persons constitute a single communication to the public for which those persons are jointly and severally liable.

3(1.41) Regulations

(1.41) The Governor in Council may make regulations defining “programming undertaking” for the purpose of subsection 1.4.

3(1.5) Exception

(1.5) A work is not communicated in the manner described in paragraph (1)(f) or subsection 1.4 where a signal carrying the work is retransmitted to a person who is a retransmitter to whom section 28.01 applies.

3(2) Rentals of computer programs

(2) For the purpose of paragraph (1)(h), an arrangement, whatever its form, constitutes a rental of a computer program if, and only if,

(a) it is in substance a rental, having regard to all the circumstances; and

(b) it is entered into with motive of gain in relation to the overall operations of the person who rents out the computer program.

3(3) Idem

(3) For the purpose of paragraph (2)(b), a person who rents out a computer program with the intention of recovering no more than the costs, including overhead, associated with the rental operations does not by that act alone have a motive of gain in relation to the rental operations.

3(4) Telecommunication to the public

(4) For the purposes of subsection (1), the act of communicating a work to the public by telecommunication does not constitute the act of performing or delivering the work in public, nor does it constitute an authorization to do the act of performing or delivering the work in public.

R.S., 1985, c. C-42, s. 3; R.S., 1985, c. 10 (4th Supp.), s. 2; 1988, c. 65, s. 62; 1993, c. 23, s. 2, c. 44, s. 55.

4(1) Definition of “publication”

4.—

(1) For the purposes of this Act, “publication” means

(a) in relation to any work, making copies of the work available to the public,

(b) the construction of an architectural work, and

(c) the incorporation of an artistic work into an architectural work, and does not include

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- (d) the performance in public of a literary, dramatic or musical work,
 - (e) the delivery in public of a lecture,
 - (f) the communication of a work to the public by telecommunication, or
 - (g) the exhibition in public of an artistic work,

but for the purpose of this provision, the issue of photographs and engravings of works of sculpture and architectural works shall not be deemed to be publication of those works.

4(2) When work not deemed to be published, etc.

(2) For the purposes of this Act, other than those relating to infringement of copyright, a work shall not be deemed to be published or performed in public or communicated to the public by telecommunication, and a lecture shall not be deemed to be delivered in public, if that act is done without the consent of the owner of the copyright.

(3) [Repealed, 1993, c. 44, s. 56]

4(4) Unpublished works

(4) Where, in the case of an unpublished work, the making of the work is extended over a considerable period, the conditions of this Act conferring copyright shall be deemed to have been complied with if the author was, during any substantial part of that period, a British subject, a subject or citizen of a foreign country to which this Act extends or a resident within Her Majesty's Realms and Territories.

4(5) When author deemed to be resident

(5) For the purposes of this Act with respect to residence, an author of a work shall be deemed to be a resident within Her Majesty's Realms and Territories if he is domiciled within Her Majesty's Realms and Territories.

R.S., 1985, c. C-42, s. 4; 1993, c. 44, s. 56.

WORKS IN WHICH COPYRIGHT MAY SUBSIST

5(1) Conditions for subsistence of copyright

5.—

(1) Subject to this Act, copyright shall subsist in Canada, for the term hereinafter mentioned, in every original literary, dramatic, musical and artistic work if any one of the following conditions is met:

(a) in the case of any work, whether published or unpublished, including a cinematograph, the author was, at the date of the making of the work,

- (i) a British subject,
- (ii) a citizen or subject of, or a person ordinarily resident in, a Berne Convention country, or
- (iii) a resident within Her Majesty's Realms and Territories;

(b) in the case of a cinematograph, whether published or unpublished, the maker, at the date of the making of the cinematograph,

- (i) if a corporation, had its headquarters in a Berne Convention country, or
- (ii) if a natural person, was

- (A) a British subject,
- (B) a citizen or subject of, or a person ordinarily resident in, a Berne Convention country, or
- (C) a resident within Her Majesty's Realms and Territories; or

(c) in the case of a published work, including a cinematograph,

(i) in relation to paragraph 4(1)(a), the first publication in such a quantity as to satisfy the reasonable demands of the public, having regard to the nature of the work, occurred within Her Majesty's Realms and Territories or in a Berne Convention country, or

(ii) in relation to paragraph 4(1)(b) or (c), the first publication occurred within Her Majesty's Realms and Territories or in a Berne Convention country.

5(1.1) Idem

(1.1) The first publication described in subparagraph (1)(c)(i) or (ii) shall be deemed to have occurred within Her Majesty's Realms and Territories or in a Berne Convention country notwithstanding that it in fact occurred previously elsewhere, if the interval between those two publications did not exceed thirty days or such longer period as may be fixed by order in council.

5(1.2) Idem

(1.2) Copyright shall not subsist in Canada otherwise than as provided by subsection (1), except in so far as the protection conferred by this Act is extended as hereinafter provided to foreign countries to which this Act does not extend.

5(2) Minister may extend copyright to other countries

(2) Where the Minister certifies by notice, published in the *Canada Gazette*, that any country that is not a Berne Convention country grants or has undertaken to grant, either by treaty, convention, agreement or law, to citizens of Canada, the benefit of copyright on substantially the same basis as to its own citizens or copyright protection substantially equal to that conferred by this Act, the country shall, for the purpose of the rights conferred by this Act, be treated as if it were a country to which this Act extends, and the Minister may give a certificate, notwithstanding that the remedies for enforcing the rights, or the restrictions on the importation of copies of works, under the law of such country, differ from those in this Act.

5(2.1) Copyright extended to Universal Copyright Convention countries

(2.1) For the purposes of the rights conferred by this Act, a country shall be treated as if it were a country to which this Act extends if it has adhered to the Universal Copyright Convention, adopted on September 6, 1952 in Geneva, Switzerland, or to that Convention as revised in Paris, France on July 24, 1971.

5(3) Copyright in records and contrivances

(3) Subject to subsection (4), copyright shall subsist for the term hereinafter mentioned in records, perforated rolls and other contrivances by means of which sounds may be mechanically reproduced, in like manner as if those contrivances were musical, literary or dramatic works.

5(4) Nature of copyright

(4) Notwithstanding subsection 3(1), for the purposes of this Act, "copyright" means, in respect of any record, perforated roll or other contrivance by means of which sounds may be mechanically reproduced, the sole right to do the following in respect of the contrivance or any substantial part thereof:

- (a) reproduce it in any material form;
- (b) publish it, if it is unpublished; and
- (c) rent it out.

5(5) What constitutes rental

(5) For the purpose of paragraph (4)(c), an arrangement, whatever its form, constitutes a rental of a record, perforated roll or other contrivance by means of which sounds may be mechanically reproduced if, and only if,

- (a) it is in substance a rental, having regard to all the circumstances; and

(b) it is entered into with motive of gain in relation to the overall operations of the person who rents out the contrivance.

5(6) Idem

(6) For the purpose of paragraph (5)(b), a person who rents out a contrivance with the intention of recovering no more than the costs, including overhead, associated with the rental operations does not by that act alone have a motive of gain in relation to the rental operations.

5(7) Reciprocity protection preserved

(7) For greater certainty, the protection to which a work is entitled by virtue of a notice published under subsection (2), or under that subsection as it read at any time before the coming into force of this subsection, is not affected by reason only of the country in question becoming a Berne Convention country.

R.S., 1985, c. C-42, s. 5; 1993, c. 15, s. 2, c. 44, s. 57.

TERM OF COPYRIGHT

6 Term of copyright

6.—

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.

R.S., 1985, c. C-42, s. 6; 1993, c. 44, s. 58.

6.1 Anonymous and pseudonymous works

6.1.

Except as provided in section 6.2, where the identity of the author of a work is unknown, copyright in the work shall subsist for whichever of the following terms ends earlier:

(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,

but where, during that term, the author's identity becomes commonly known, the term provided in section 6 applies.

1993, c. 44, s. 58.

6.2 Anonymous and pseudonymous works of joint authorship

6.2.

Where the identity of all the authors of a work of joint authorship is unknown, copyright in the work shall subsist for whichever of the following terms ends earlier:

(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,

but where, during that term, the identity of one or more of the authors becomes commonly known, copyright shall subsist for the life of whichever of those authors dies last, the remainder of the calendar year in which that author dies, and a period of fifty years following the end of that calendar year.

1993, c. 44, s. 58.

7 Term of copyright in posthumous works

7.—

In the case of a literary, dramatic or musical work, or an engraving, in which copyright subsists at the date of the death of the author or, in the case of a work of joint authorship, at or immediately before the date of the death of the author who dies last, but which has not been published or, in the case of a dramatic or musical work, been performed in public or, in the case of a lecture, been delivered in public, before that date, copyright shall subsist until publication, or performance or delivery in public, whichever may first happen, for the remainder of the calendar year of the publication or of the performance or delivery in public; as the case may be, and for a period of fifty years following the end of that calendar year.

R.S., 1985, c. C-42, s. 7; 1993, c. 44, s. 58.

8. [Repealed, 1993, c. 44, s. 59]

9(1) Cases of joint authorship

9.—

(1) In the case of a work of joint authorship, except as provided in section 6.2, copyright shall subsist during the life of the author who dies last, for the remainder of the calendar year of that author's death, and for a period of fifty years following the end of that calendar year, and references in this Act to the period after the expiration of any specified number of years from the end of the calendar year of the death of the author shall be construed as references to the period after the expiration of the like number of years from the end of the calendar year of the death of the author who dies last.

9(2) Nationals of other countries

(2) Authors who are nationals of any country, other than a country that is a party to the North American Free Trade Agreement, that grants a term of protection shorter than that mentioned in subsection (1) are not entitled to claim a longer term of protection in Canada.

R.S., 1985, c. C-42, s. 9; 1993, c. 44, s. 60.

10(1) Term of copyright in photographs

10.—

(1) The term for which copyright shall subsist in photographs shall be the remainder of the calendar year of the making of

(a) the initial negative or other plate from which the photograph was directly or indirectly derived,
or

(b) the initial photograph, where there was no negative or other plate, and a period of fifty years following the end of that calendar year.

10(2) Author of photograph

(2) The person who

(a) was the owner of the initial negative or other plate at the time when that negative or other plate was made, or

(b) was the owner of the initial photograph at the time when that photograph was made, where there was no negative or other plate,

shall be deemed to be the author of the photograph and, where that owner is a body corporate, the body corporate shall be deemed for the purposes of this Act to reside within Her Majesty's Realms and Territories or to be ordinarily resident in a Berne Convention country if it has established a place of business therein.

R.S., 1985, c. C-42, s. 10; 1993, c. 44, s. 60.

11 Term of copyright in records, perforated rolls, etc.

11.—

The term for which copyright shall subsist in records, perforated rolls and other contrivances by means of which sounds may be mechanically reproduced shall be the remainder of the calendar year of the making of the initial plate from which the contrivance was directly or indirectly derived, and a period of fifty years following the end of that calendar year, and the maker of the contrivance shall be deemed to be its author, and, where that maker is a body corporate, the body corporate shall be deemed for the purposes of this Act to reside within Her Majesty's Realms and Territories or to be ordinarily resident in a Berne Convention country if it has established a place of business therein.

R.S., 1985, c. C-42, s. 11; 1993, c. 44, s. 60.

11.1 Cinematographs

11.1.

Copyright in a cinematograph or a compilation of cinematographs shall subsist

(a) for the remainder of the calendar year of the first publication of the cinematograph or of the compilation, and for a period of fifty years following the end of that calendar year; or

(b) if the cinematograph or compilation is not published before the expiration of fifty years following the end of the calendar year of its making, for the remainder of that calendar year and for a period of fifty years following the end of that calendar year.

1993, c. 44, s. 60.

12 Where copyright belongs to Her Majesty

12.—

Without prejudice to any rights or privileges of the Crown, where any work is, or has been, prepared or published by or under the direction or control of Her Majesty or any government department, the copyright in the work shall, subject to any agreement with the author, belong to Her Majesty and in that case shall continue for the remainder of the calendar year of the first publication of the work and for a period of fifty years following the end of that calendar year.

R.S., 1985; c. C-42, s. 12; 1993, c. 44, s. 60.

OWNERSHIP OF COPYRIGHT

13(1) Ownership of copyright

13.—

(1) Subject to this Act, the author of a work shall be the first owner of the copyright therein.

13(2) Engraving, photograph or portrait

(2) Where, in the case of an engraving, photograph or portrait, the plate or other original was ordered by some other person and was made for valuable consideration in pursuance of that order, in the absence of any

agreement to the contrary, the person by whom the plate or other original was ordered shall be the first owner of the copyright.

13(3) Work made in the course of employment

(3) Where the author of a work was in the employment of some other person under a contract of service or apprenticeship and the work was made in the course of his employment by that person, the person by whom the author was employed shall, in the absence of any agreement to the contrary, be the first owner of the copyright, but where the work is an article or other contribution to a newspaper, magazine or similar periodical, there shall, in the absence of any agreement to the contrary, be deemed to be reserved to the author a right to restrain the publication of the work, otherwise than as part of a newspaper, magazine or similar periodical.

13(4) Assignment of right by owner

(4) The owner of the copyright in any work may assign the right, either wholly or partially, and either generally or subject to territorial limitations, and either for the whole term of the copyright or for any other part thereof, and may grant any interest in the right by licence, but no assignment or grant is valid unless it is in writing signed by the owner of the right in respect of which the assignment or grant is made, or by his duly authorized agent.

R.S., c. C-30, s. 12.

14(1) Limitation where author is first owner of copyright

14.—

(1) Where the author of a work is the first owner of the copyright therein, no assignment of the copyright and no grant of any interest therein, made by him, otherwise than by will, after June 4, 1921, is operative to vest in the assignee or grantee any rights with respect to the copyright in the work beyond the expiration of twenty-five years from the death of the author, and the reversionary interest in the copyright expectant on the termination of that period shall, on the death of the author, notwithstanding any agreement to the contrary, devolve on his legal representatives as part of the estate of the author, and any agreement entered into by the author as to the disposition of such reversionary interest is void.

14(2) Restriction

(2) Nothing in subsection (1) shall be construed as applying to the assignment of the copyright in a collective work or a licence to publish a work or part of a work as part of a collective work.

14(3) Ownership in case of partial assignment

(3) Where, under any partial assignment of copyright, the assignee becomes entitled to any right comprised in copyright, the assignee, with respect to the rights so assigned, and the assignor, with respect to the rights not assigned, shall be treated for the purposes of this Act as the owner of the copyright, and this Act has effect accordingly.

(4) [Repealed; R.S., 1985, c. 10 (4th Supp.); s. 3]

R.S.; 1985, c: C-42, s. 14; R.S., 1985, c. 10 (4th Supp.), s. 3.

MORAL RIGHTS

14.1(1) Moral rights

14.1.

(1) The author of a work has, subject to section 28.2, 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.

14.1(2) No assignment of moral rights

(2) Moral rights may not be assigned but may be waived in whole or in part.

14.1(3) No waiver by assignment

(3) An assignment of copyright in a work does not by that act alone constitute a waiver of any moral rights.