

# INFORMATION SHEET

## Obtaining copyright protection

**Canada.** Copyright arises automatically upon creation of a work that falls within the scope of the *Copyright Act* and is independent of registration or any formal notification of the existence of copyright. However, registering a copyright provides evidence that copyright subsists in the work and that the person named in the registration is the owner of the copyright. Registration also constitutes sufficient notice of the existence of copyright to support entitlement to a claim to damages for copyright infringement.

To obtain a copyright registration, it is necessary to provide the names and addresses of individuals who are to be named as the authors of the work. If the owner of the copyright is different from the author, it is also necessary to establish who the owner is and provide an address for the owner. Normally, the author of a work is the first owner of the copyright, except where the author was in the employment of another under a contract of service and the work was made in the course of such employment. In these cases the employer is the first owner.

It is also necessary to establish the title of the work and the nature of the work itself (e.g., literary, musical, artistic or dramatic).

If the work has been published through the issue of copies made available to the public, it is necessary to establish the date and place of the first publication. Using this information, we can prepare and file a copyright application on your behalf.

Whether or not a copyright registration is sought or obtained, you are still entitled to mark the work in which you claim copyright. While marking of the work is voluntary, the Universal Copyright Convention (to which Canada belongs) provides for marking which serves as notice that there is a copyright in the work. The preferred

form of marking is a "C" in a circle followed by the name of the owner and the year of first publication. For most works, copyright subsists for the life of the author, plus 50 years.

Copyright may be assigned or licensed in whole or in part, either generally or subject to territorial limitations. The assignment or licence can be for either the whole term of the copyright or any part thereof, but in order to be valid, the assignment of copyright must be in writing. In cases where the party who is to own the copyright is neither the author nor the employer of the author, it is essential that a written assignment of copyright be obtained.

The Canadian *Copyright Act* also provides for moral rights, which entitle the author to protect the integrity of the work and, where reasonable, to be associated with the work or to remain anonymous. These rights enable the author to take action against infringers to preserve the honour or reputation of the author if the work is distorted, mutilated, or otherwise modified or is used for promotion of a product, service, cause or institution.

Moral rights cannot be assigned, but may be waived in whole or in part. Where there is an infringement of copyright, the copyright owner may be entitled to all remedies by way of injunction, damages, customs detention orders, accounts, delivery up and otherwise, including statutory damages from not less than \$500 and not more than \$20,000 for each work infringed.

**United States.** U.S. copyright laws are in some ways similar to those of Canada. For example, in the United States, as in Canada, copyright arises automatically on the creation of a work. Similarly, while notice of copyright is not required, it is advisable, and copyright may be assigned or licensed in whole or in part.

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However, unlike Canada, the United States provides for corporate authorship where the employer is deemed to be the author, while moral rights protection applies only to visual works. U.S. copyright laws also require that copies of the work be submitted to the Copyright Office in order for the copyright in the work to be registered.

Through our network of associates, Smart & Biggar/Fetherstonhaugh has the expertise to handle all of your copyright questions and registrations in Canada, in the United States and throughout the world. Please contact any one of our offices for more information regarding our services.