

Copyright and the web

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[CBC News](#)

A high-school student prints this article on copyright law from the CBC.ca website and makes copies for other students in his work group, who use it to complete a class project.

Under Canada's current Copyright Act, that student is breaking the law.

The copyright licence carried by elementary and secondary schools, which allows teachers and students to make limited copies of some copyrighted material, doesn't extend to the internet.

This is just one of the problems with Canada's current copyright laws that lawmakers are trying to fix. And most of those problems stem from the growth of the internet.

The concept of copyright law is familiar in traditional media such as book publishing, the art world and the recording industry. However, the rapid growth of the internet and computer technology, and the resulting widespread distribution of media content, have raised many new issues and brought into question whether copyright law has managed to keep up.

Why have copyright?

The fundamental principle underlying copyright law is to reward an author for his or her creative efforts. The intent is to encourage people to create original works by ensuring those works can't be copied by others without compensation or credit to the author.

Copyright is a bundle of rights granted by the Copyright Act, which prescribes when a person can enjoy exclusive rights in a work, which works merit protection and which activities a copyright owner can prevent others from engaging in. It also deals with exceptions to infringement, the formation and activities of copyright collectives, and authors' or moral rights. Copyright protection generally lasts until 50 years after the author's death. The Copyright Act says that copyright can rest only in certain types of works, for example:

- Artistic works, including paintings, drawings, maps, charts, plans, photographs, engravings, sculptures and architectural works.
- Dramatic works, including the plot lines of movies, videos and television shows.
- Literary works, including books, letters, magazines and computer programs.
- Musical works, including any work of music or composition, with or without words.

Copyright also protects performers' performances, sound recordings and broadcasts.

Who can copyright what?

Ideas can't be protected under copyright, only the expression of ideas once they're fixed in a material form. An artist who paints a landscape is entitled to copyright in the particular form in which the landscape was painted. Copyright doesn't prevent others from painting the same landscape in a different manner. The form of expression has to be original and not copied from another work, but there's no requirement that the work be aesthetically pleasing. Copyright exists separate from the physical work itself. For example, if you buy a painting at an auction, you don't get copyright along with the canvas.

As a general rule, the first owner of the copyright in a work is the author, but if he or she is being paid by an employer to do the work, the employer will own the copyright. If the work is the result of a commission, copyright belongs to the person who commissioned the work if the copyright is assigned to that person in writing. The copyright in sound recordings is owned by the entity that created the recording, while copyright to a performance is owned by the performer.

Here are some of the rights that the act solely reserves for copyright holders:

- To produce or reproduce the work.
- To perform the work in public.
- To publish the work.
- To translate the work.
- To make a sound recording or film of the work.
- To communicate the work to the public by telecommunication.

The copyright owner also has the right to authorize these acts.

How is copyright protected?

The copyright owner can go to court to stop a person from doing any one of the activities that are reserved to the copyright owner. In order to succeed, a copyright owner must establish that there's a substantial similarity between the owner's work and that of the infringer. And since the essence of copyright infringement is copying, the alleged infringer must have been found to have copied the original work. Infringing activities may also be criminal offences.

Remedies for copyright infringement may include getting a court to stop the infringement. The infringer may have to give up all of the offending copies of the work and may have to pay the owner damages. These might include any profits earned as a result of the infringement. The Copyright Act allows the copyright owner to choose to receive an award of statutory damages, based on the number of works involved. The amount of the award is determined by the court and the minimum amount is \$500, the maximum \$20,000, per work.

Copyright and the internet

Much of the material posted on the internet, such as text, images and music, is subject to copyright. Just because information is available for free on the internet doesn't necessarily mean people are free to make copies and redistribute it. This distinction between the two kinds of "free" is sometimes made by calling them "free as in beer" (*gratis*, without cost) and "free as in speech" (*liber*, free of restrictions). So, just because information is available for free

(as in beer) on the internet doesn't necessarily mean people are free (as in speech) to make copies and redistribute it.

For example, if a someone puts up a website, he may either expressly or implicitly give a licence to persons surfing the internet to browse the site. The licence may also extend to other activities such as the downloading of certain permitted software. How far this permission extends depends on the circumstances and the permissions granted, or the restrictions imposed, by the owner in the legal conditions posted on the site.

Copyright violation may apply to a person who makes an unauthorized copy of a work and makes it available to the public over the internet. For example, someone who copies a photograph and posts it on a website without authorization from the copyright owner would be infringing copyright. So would someone making unauthorized copies of software available for downloading.

Music and the web

Songwriters and record companies have always had a problem trying to prevent traditional copyright infringements, such as unauthorized public performances of songs or, more currently, bootleg copying of CDs. The internet and computer technology have created a new threat to the recording industry. New software allows for the digitization of music in file format and the downloading and streaming of music over the internet. Large capacity storage devices such as computer hard drives and CD-ROMs permit the storage of digitized music. And file-sharing programs – first, Napster, and later, such programs as Kazaa and BitTorrent – have provided a means for allowing individuals to share copies of music, more or less anonymously, throughout the world.

In Canada, there are generally two types of copyright in music. There's copyright in a musical work, which is essentially a song including its music and any lyrics. The copyright owner has the sole right to produce, perform or publish the song, make any sound recording of the song, and communicate the song to the public by telecommunication. The owners of copyright in the musical works (typically the songwriter or publisher) receive royalties from a copyright collective such as SOCAN for the public performance of the song over radio or television.

There is also copyright in a sound recording, which is essentially the performance of a song fixed on some medium, such as a CD. The copyright in the sound recording exists independently of any copyright in the musical work. The copyright owner has the sole right to publish the work for the first time, reproduce it in a material form, rent it out and receive compensation for communication of the recording to the public by telecommunication or its performance in public. The owner of copyright in a sound recording receives compensation by selling copies of the sound recording and through royalties paid to a copyright collective.

If a record company posts a sound recording on its site, or a music downloading site such as iTunes, and makes it available for downloading (for free or for a charge), the downloading, although it involves duplication of the sound recording, wouldn't be an infringement because the activity is done with the permission of the copyright owner. The individual who purchases a CD from a record store may make a back-up copy of the CD for personal use without infringement. The owner of copyright in the sound recording on the CD is compensated through the original purchase of the recording. Owners of copyright in the musical works and sound recordings are also compensated through a royalty mechanism, essentially a surtax on the sale of blank recording media such as cassettes and CDs, which is distributed to copyright owners.

It's a simple matter for the recording industry to pursue a website operator who posts unauthorized copies of a sound recording on a website for downloading in Canada. Record companies have also struck deals with specific music downloading websites, in exchange for a fee.

When it comes to sharing sound recordings over the internet without the authorization of the copyright holder, however, the legal waters get quite a bit murkier.

In March 2004, the Supreme Court ruled that downloading a song from a file-sharing system for personal use is not an infringement of copyright. In addition, it ruled that placing a copy of a song in a shared directory on one's computer, one that is accessible by other users over a file-sharing network, is not considered distribution under the Copyright Act.

[More on downloading music](#)

Conclusion

Today, the recording industry is struggling with some of these concepts and pursuing some of the more popular sites that offer free downloads of unauthorized recordings. Similar concerns may arise with respect to the online distribution of books, movies and other visual content.

Some suggest that the free exchange of ideas that's embodied in sharing copyrighted works over the internet is precisely what the net was intended to accomplish. However, the distribution of original works over the internet without compensation for the copyright owner may remove the incentive to create that's the very purpose of the law of copyright.

It's clear the new technologies are not going away. The challenge for the law will be to strike the right balance between protection of creators on the one hand and, on the other, the benefits to be gained from technologies that give easy access to copyright works.

Adapted from an article for CBC.ca by W. Lee Webster and G. Lee Muirhead, lawyers with the Toronto firm [Osler, Hoskin & Harcourt](#).

