



Question and Answer: Is It Necessary to Register a Copyright?

Posted on September 25, 2010 by [Bob Tarantino](#)

[Good artists copy - great artists steal (I'm so hardcore I won't even provide an attribution for that aphorism). To that end, we're going to slightly alter our "[Questions and Answers](#)" feature: instead of just linking to question/answer posts found at other blogs, we're going to steal their questions and provide our own answers! (Innovative, yes?) There's a practical reason for this, however: many entertainment and media law blogs are written by and for residents of the United States, and so the same question posed by a Canadian would result in a different answer. Inspiration for this post was provided by [Jesse Saivar at Law Law Land](#).]

So, you've written a novel, composed a song, taken a photograph or drawn a picture - assuming you're not an employee and created that work in the course of your employment, congratulations, you're the author of that work and own copyright in it. Is it necessary to register your copyright? No, it is not *necessary* to file a registration, but there are certain advantages to doing so under the *Copyright Act* (Canada). What are those advantages? [Section 53](#) of the *Copyright Act* (Canada) provides the details:

(1) The Register of Copyrights is evidence of the particulars entered in it, and a copy of an entry in the Register is evidence of the particulars of the entry if it is certified by the Commissioner of Patents, the Registrar of Copyrights or an officer, clerk or employee of the Copyright Office as a true copy.

(2) A certificate of registration of copyright is evidence that the copyright subsists and that the person registered is the owner of the copyright.

(2.1) A certificate of registration of an assignment of copyright is evidence that the right recorded on the certificate has been assigned and that the assignee registered is the owner of that right.

(2.2) A certificate of registration of a licence granting an interest in a copyright is evidence that the interest recorded on the certificate has been granted and that the licensee registered is the holder of that interest.

In short, registering your copyright (or the interest which you have acquired in copyright by means of an assignment or license) provides *prima facie* evidence that you in fact have the rights which you claim to have. That can be very handy in the event that you find yourself in court - if a copyright owner sues someone for infringement, the first argument which the defendant will try to raise is to require the plaintiff to prove that (a) copyright actually exists in the work in question, and (b) the plaintiff actually possesses the rights it claims to have. A certificate of registration from the CIPO will be proof of both - in the absence of such a certificate the plaintiff will be obliged to provide some other relevant evidence (such as documentation relating to the creation or publication of the work, contracts



indicating that the plaintiff is the owner or licensee of the rights, etc.). That \$65 filing fee can save a lot of hassle down the road.

In addition, Section 39(1) of the Act provides that an injunction is the only available remedy for infringement if the defendant "was not aware and had no reasonable ground for suspecting that copyright subsisted" in the work in question. But that limitation does not apply if the work was registered on the date of infringement.

It should be noted that this is quite different from United States law as it relates to copyright registration: in the United States, a registration with the Library of Congress is required in order to bring an action in US federal court, and statutory damages and recovery of legal fees are only available if registration was obtained in a timely manner - none of those limitations apply in Canada. Finally, the very different nature of the Canadian copyright registry, as compared to that in the United States, should be remarked upon: in the United States an actual copy of the work in question must be deposited in order to obtain registration; in Canada, no deposit is required or even permitted.

The Canadian Intellectual Property Office (CIPO), the good folks who maintain Canada's copyright registry, offers [a handy online guide to filing an application for registration of a copyright](#).

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