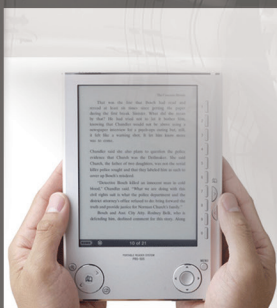


INFORMATION BROCHURE

LICENCES ISSUED BY THE COPYRIGHT BOARD FOR THE USE OF WORKS WHEN THE COPYRIGHT OWNER CANNOT BE LOCATED



About us

The Copyright Board of Canada (the “Board”) is an economic regulatory body. Its mandate is:

- To establish the royalties to be paid for the use of copyrighted works when the administration of such copyright is entrusted to a collective society;
- To supervise agreements between users and collective societies; and,
- To issue licences for the use of works when the copyright owner cannot be located.

What is copyright?

Copyright is a right granted by the *Copyright Act* (the “Act”). In general and unless an exception applies, copyright provides that each protected use of a work shall be authorized.

Therefore, if, for example, you would like to reproduce a musical work or a photograph, broadcast a movie in public or translate a book, you will need an authorization (licence).



Which works are protected by copyright?

The following works are protected by copyright:

- Literary works (books, newspapers, brochures, computer programs or, in general, written works);
- Dramatic works (movies, plays, television programs, scripts, etc.);
- Musical works (musical compositions, with or without words, musical scores); and,
- Artistic works (drawings, sculptures, photographs, paintings, etc.).

Furthermore, performances (the singer who sings, the actor who plays a role, the musician interpreting a musical work, etc.), sound recordings (recording of sound, fixed in a material form, for example on a CD) and communication signals (radio waves transmitted for reception by the public) are also protected by copyright.

Protection is granted without any formalities, once the work is created and fixed in any material form.

What is not protected by copyright?

Ideas are not protected by copyright. Works protected by copyright are those described above.



Who owns copyright?

Copyright on protected works is owned by the rights holders who are the authors, composers, writers, painters, sculptors, etc. Performers, sound recording makers and broadcasters are also respectively owners of copyright on performances, sound recordings and communication signals.

What is the duration of copyright?

In general, copyright in works expires 50 years following the end of the calendar year of the author's death.

There are special rules for works of joint authorship or for works for which the Crown holds copyright. In addition, sound recordings are protected for a duration of 70 years following the end of the calendar year in which the publication occurred.

After copyright protection has expired, a work is considered to be in the public domain and may be used without restriction. However, it is important to remember that new editions of a work that is in the public domain may contain elements that are protected by their own copyright even though the original work is not.

For example, the use of a sound recording created in 1990 of a musical work for which the composer died more than 50 years ago will have to be authorized. Indeed, even if the musical work is in the public domain, the sound recording is still protected by copyright.

CD 1990

Composer of musical work died in 1800

CD protected until 2060

Musical work is in the public domain since 1850

CD 1945

Composer of musical work died in 1980

CD is in the public domain since 2015

Musical work protected until 2030



How can I use a work?

In order to use a protected work or any substantial part thereof, an authorization must be obtained from the copyright owner. When this owner is unlocatable, you can file with the Board an application for a licence. Section 77 of the *Act* describes how the Board can intervene when it is impossible to locate the copyright owner. It reads as follows:

77.(1) Where, on application to the Board by a person who wishes to obtain a licence to use

- (a) a published work,*
- (b) a fixation of a performer's performance,*
- (c) a published sound recording, or*
- (d) a fixation of a communication signal,*

in which copyright subsists, the Board is satisfied that the applicant has made reasonable efforts to locate the owner of the copyright and that the owner cannot be located, the Board may issue to the applicant a licence to do an act mentioned in section 3, 15, 18 or 21, as the case may be.

(2) A licence issued under subsection (1) is non-exclusive and is subject to such terms and conditions as the Board may establish.

(3) The owner of a copyright may, not later than five years after the expiration of a licence issued pursuant to subsection (1) in respect of the copyright, collect the royalties fixed in the licence or, in default of their payment, commence an action to recover them in a court of competent jurisdiction.



Procedure to follow

To obtain a licence, your application should demonstrate that you comply with the following conditions:

- a. the work is published;
- b. the work is protected;
- c. a licence is required; and,
- d. you have made reasonable efforts to locate the copyright owner, without success.

a) The work is published

The Board can only issue licences for the use of works that have been published, meaning that copies have been made available to the public with the consent of the copyright owner.

b) The work is protected

You don't need a licence if the work is no longer protected by copyright. As mentioned above, copyright generally expires 50 years following the end of the calendar year of the author's death.

c) A licence is required

A licence is required unless the intended use is not protected by copyright. You do not need a licence if one of the following situations applies:

– Use of an insubstantial part of a work

The *Act* provides protection solely for the use of a substantial part of a work. A licence will not be required when an insubstantial part of a work is used. However, the *Act* does not define what is meant by an insubstantial part. Such determination will be made by an analysis of the excerpts used. There is no mathematical rule by which a part of a work will be deemed to be insubstantial. It is a matter of facts and degree, an evaluation first qualitative and then quantitative of the excerpt used. For example, a short excerpt of a work could constitute a substantial part if it represents the essence of the work (a significant movie scene, the first seconds of a musical success allowing recognizing it).

– **Fair Dealing**

Sections 29 to 29.2 of the *Act* provide a number of exceptions by which it is possible to use a work without authorization. They are fair dealing for the purpose of research, private study, education, parody, satire, criticism or review and news reporting. What constitutes fair dealing is determined in conformity with criteria established by the courts that are related to the purpose, character and amount of the dealing, the alternatives, the nature of the work and the effect of the dealing on the work.

Courts have interpreted these exceptions as a user's right. Some of these exceptions require certain conditions to be met (for example the mention of the source for a criticism, review or news reporting).

– **Non-commercial user-generated content**

Section 29.21 of the *Act* allows, under certain conditions, the use of an existing work in the creation of a new work for non-commercial purposes.

– **Reproduction for private purposes**

Section 29.22 of the *Act* allows, under certain conditions, the reproduction of a work for private purposes, without any distribution to a third party.

– **Reproduction for later listening or viewing**

Section 29.23 of the *Act* allows, under certain conditions, the reproduction of a program for listening or viewing purposes, without any distribution to a third party.

– **Reproduction for backup copies**

Section 29.24 of the *Act* allows, under certain conditions, the reproduction of a work for backup purposes, without any distribution to a third party.

Educational institutions, libraries, archives and museums can also rely on specific exceptions that are set out in sections 29.4 to 30.4 of the *Act*.

If you think that you don't need a licence for the use you intend to make, you could choose to obtain legal advice to confirm that one of the above-mentioned situations applies to you.



d) You have made reasonable efforts to locate the copyright owner, without success

The Board will grant a licence only if you have made reasonable efforts to find the copyright owner. Your search must therefore be thorough. There are many ways you can locate a copyright owner. Try as many as you can before applying to the Board. Even if you do not know the name or address of the copyright owner, your search may be easier than you think.

Collective societies should be the starting point of your research. Collectives are organizations that administer the rights of several copyright owners. They can grant authorizations to use their works and set the conditions for such use. Collective administration is widely spread in Canada, particularly for the public performance and the reproduction rights of musical works, sound recordings, performances, as well as for reproduction of literary works.

Collective societies are usually affiliated with foreign societies allowing them to represent foreign copyright owners as well. The Board can give you a list of these collective societies with details on their respective mandate along with other general information. This list can also be found on the Board's website at: <http://cb-cda.gc.ca/societies-societes/index-e.html>

You can also use Internet search engines, communicate with publishers, libraries, universities, museums or a Ministry of education. If the author is no longer alive, try to find out who inherited the copyright or who administered the estate.

The work must be used in Canada

Licences delivered by the Board are only valid in Canada. Outside Canada, you are bound by the laws of each country in which you will use the work, even if the copyright owner is Canadian.

Submitting your application

Your application must be submitted via facsimile, email or by mail, using the form available at the following link: <http://www.cb-cda.gc.ca/unlocatable-introuvables/other-autre/FOR-2016-08-22-EN.pdf>. The Board will need the following information (if available) to examine your application:

- Applicant's information: Name to appear on the licence, whether the licence will be used by an individual or a business, the applicant's contact information (address, email address, telephone number) and the representative's contact information, if the applicant is applying on behalf of someone else (name of representative, relationship to applicant, address, email address, and telephone number);
- Description of the work for which a licence is requested: type, title, if the work has been published, author, the year of death if the author is deceased, the nationality of the author, year of publication, publisher, producer (if applicable) and any other relevant details to the work;
- Proposed use of the work: Description on how you intend to use the work. Be specific and provide as much detail as possible. For example, if you wish to include an excerpt from a literary work in a book, indicate the length of the excerpt, the number of pages of the book, how the excerpt will be used and, if the book will be sold, the suggested retail price and the number of copies produced. If possible, provide a copy of the excerpt;
- Details of your project: Describe your project. Where do you intend to distribute it? How do you intend to distribute or sell it? Information related to royalties you are paying or have paid for use of similar works in your project;
- Date by which you plan to use the work and for how long;
- Efforts made to locate the copyright owner and the results obtained. Provide a detailed description of the efforts made and results obtained as well as copies of any relevant material, including any correspondence and exchange of emails; and,
- Any additional information, if any, which you believe may be useful in the analysis of your application.



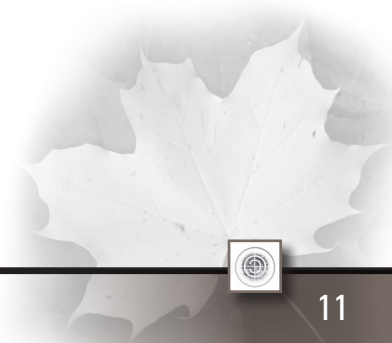
Once all the required information has been received, the Board will analyse the application and decide whether to issue a licence.

The Board can usually issue a decision within a delay of 45 days once the file is determined to be complete. Each application, no matter how urgent, has to be carefully scrutinized to ensure that all criteria established by the *Act* are met. Therefore, do not wait until the last minute before submitting your application.

If the Board issues a licence, it will also set the terms and conditions, such as the amount of royalties to be paid and the duration of the licence. The licence will specify the following:

- the authorized use (for example, how many copies you can make, to whom you may distribute them and for what purpose);
- the expiry date of the licence;
- the licence fee and details regarding payment; and,
- any other terms and conditions the Board considers appropriate.

The issuance of a licence by the Board does not release the licensee from the obligation to obtain authorization for any other use not covered by the licence.



For more information, please contact:

Secretariat
Copyright Board of Canada
56 Sparks Street, Suite 800
Ottawa, Ontario
K1A 0C9

Telephone: (613) 952-8621
Facsimile: (613) 952-8630
E-mail: secretariat@cb-cda.gc.ca
Website: www.cb-cda.gc.ca

