

Copyright © and Photography

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Central Okanagan Photographic Society

Notice :-)

This information is not legal advice. I am retired, and I am not licensed or insured to provide legal services. If you have any issues in this area, consult a lawyer with experience in Intellectual Property Law (which sounds a lot like a reference to me, until you re-read the previous sentence).

Copyright generally

- is a form of Intellectual Property (as distinct from Personal Property or Real Property)
- is a “creature of statute” and did not exist in common law or civil law
- is a legislated balance; it confers exclusive rights for a certain period, following which the subject matter becomes public domain
- a “bundle of sticks” - multiple rights which can be dealt with individually or collectively

Copyright specifically

- The exclusive right to produce, reproduce (and in some cases perform) the subject matter
- PLUS the right to authorize other to do those acts
- Term is generally life of the author plus 50 years (non-renewable, and unrelated to ownership)
- Strictly limited to 4 named categories of 'work'; artistic (incl. photos), literary, musical, dramatic.

Copyright Territory

- in Canada, and enforceable in many other countries due to international conventions
- Berne Convention (Article 5) National treatment, and no formality (except possibly material form)
- Universal Copyright Convention, requires proper copyright notice with at least 3 specific parts:
word/symbol • date of 1st publication • owner

Copyright Ownership

- 13.(1) Subject to the Act, the author of a work shall be the first owner of the copyright therein.
- (2) Where, in the case of... photograph... the... original was ordered by some other person and was made for valuable consideration, and the consideration was paid, in pursuance of that order, in the absence of any agreement to the contrary, the person by whom the... original was ordered shall be the first owner of the copyright. ***[NB this paragraph was repealed (i.e. cancelled) in 2012]***
- (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...

Copyright in Photos

- by definition, “photograph” includes photolithograph and any work expressed by any process analogous to photography
- most other specific references to photography — including Section 13(2) — were repealed by 2012, leaving the same rules that apply to artistic works generally

Moral Rights

- Parallel rights that exist in the Author only, regardless of ownership of the copyright
- 14.1 (1) Paternity - the right to be associated with a work by name or pseudonym or remain anonymous
- 28.2 (1)(a). Integrity: Alteration - the right to prevent unauthorized alteration of a work if the author's reputation might be prejudiced
- 28.2 (1)(b) Integrity: Association - the right to prevent a work from being associated with a product or cause or institution without author's permission

Copyright Infringement

- s.28(1) — Infringement is doing anything that the owner has the exclusive right to do
- Enforcement is the responsibility of the owner, by civil (tort) suit with numerous remedies; general damages, specific (pecuniary) damages, punitive damages, statutory damages, accounting of profit, destruction or delivery up or infringing material, legal costs

Transfer of Copyright

- Copyright or any part(s) of it can be licensed (i.e. leased) or assigned (i.e. sold)
- Assignments or Licenses must be in writing
- Moral Rights cannot be licensed or assigned, but remain with the author until either waived or expiration: 14.1 (2).

Personality & Privacy

- Copyright images frequently contain images or likenesses of living individuals.
- Personality rights exist in Canada, and where the individual has sufficient notoriety or celebrity, can be enforced in a civil (tort law) suit.
- Privacy rights are being recognized in Canada, and generally, copyright ownership is not an answer to a privacy claim, unless the individual has granted permission for the use of their image