

Legal Information Specific to Photography

Mrs. Vercruyssen

TGP3M & TGP4M

Importance of Copyright

- Copyright legislation protects a creator's work and protects a creator's professional reputation
- It affects how you negotiate with clients, the fees you charge and, ultimately, the long-term success of your business.

What is Copyright?

- Copyright literally means having the right to copy, which extends to all types of reproduction, publication, public presentation and other specified uses
- Copyright is part of international law that deals with 'intellectual property.' These laws, which vary between countries, also apply to patents, trademarks, industrial design and trade secrets.
- In very broad terms, copyright protects the expression of original ideas but not the information itself. This expression is often called 'the work' or, in the case of photos and illustrations, 'the artistic work.' Copyright consists of a 'bundle' of different rights that covers how that work is used. The copyright of a work can be divided into a number of rights, and each right dealt with separately.

Clarify

- Take a simple example of a photograph showing an apple at sunset.
- Copyright law does not protect the idea behind an illustration or a photograph. The idea of taking a photo of an apple at sunset is not protected by copyright so there are no restrictions on creating such an image. But the expression of a specific image - the way the photography is taken, the positioning, the lighting etc. is protected through copyright. Even if the photograph includes elements, such as a building or object, that are not yours, the work itself is yours.

Simple Principle

- Whoever creates or owns a work controls how that work is used
- To qualify for copyright, a work must be:
 - **Original**
Not a copy of an existing work.
 - **Fixed**
Exist in some identifiable (i.e. physical, visual, electronic) form. Also, the work must be created by a person who is a citizen or resident of Canada.
Canadian copyright law applies to works in Canada. If a work created in Canada is used in another country, then that country's copyright law applies.

Photographs are Different

- In Canada, if you are “commissioned” or “hired” to take a photo/portrait of someone, the person who is paying you automatically has copyright of the image
 - Unless of course there is a contract indicating something different
- This is different from other copyright in Canada and is specific to images/photographs and illustrations

General Guidelines

- When creators produce a work for themselves, they own the copyright.
- When creators produce a work as part of their employment, including apprenticeships, the employer owns the copyright.
- When created on a commissioned basis, the person or company that commissions the work owns the copyright once they have paid for it in full. If the client who commissions the work fails to pay for it, the copyright remains with the creator.

Contracts

- If you plan to be a portrait photographer and you want to keep the copyright of your images you will need a contract that states that
- Canadian copyright law states that any contract that specifically addresses copyright issues is valid only when in writing and properly signed.

Display

- In Canada a display of the copyright symbol is optional
- If you choose to use it,
 - copyright includes the © symbol, followed by the year and the name of the copyright owner

Your Rights

- Canadian copyright law gives the copyright owner of a work the exclusive right to reproduce, publish, publicly present that work, or any substantial portion of that work, or make certain other uses of that work.
- To comply with copyright law, reproduction of a copyright work in most cases requires permission from the copyright owner. That permission must be put in writing and may involve a fee negotiated with the user.

Make Money

- You could set conditions and fees on the use of your image
- That way every time your image is used, it generates revenue for you... And continues doing it for 50 years after you die
- That is why if you DON'T have copyright, make sure you charge enough for the picture 😊

Licensing

- Because controlling and policing copyright can be very time consuming another option is Licensing
- When a photographer can license their work for specific uses
- Based on 5 Terms
 - Type of media – book cover, poster, photo etc
 - Geographical territory – defined by a market – Huron County
 - Timing and/or duration of use – define how long
 - Circulation and/or visibility – where will it be seen? Toronto Star or the Citizen – very different exposures
 - Exclusivity – one person/group with the license or several?
 - Example - The non-exclusive right of reproduction for 5000 posters for the greater Toronto area for 6 months.

Moral Rights

- Copyright allows creators to
 - Prevent unauthorized changes to a creator's work, and
 - Protect the creator's reputation.
- These provisions are known as 'moral rights.' Moral rights, which are part of copyright, give the creator the right to be identified with the work and the ability to protect the integrity of that work.
- With moral rights, creators can decide whether or not to include their name with their work. They also get a veto on any changes to their work that would harm their reputation.
- In Canada, moral rights always remain with the creator (or the creator's heirs), even if someone else, say a client or a publisher, becomes the copyright owner. Unlike other rights, moral rights cannot be sold or transferred. Creators can waive their moral rights. This means the creator agrees not to enforce his/her moral rights. Such a waiver can apply to all uses or be restricted to specified circumstances.

Length of Protection

- As of 2000 there are 2 lengths for images and illustrations
 - If the ownership is an individual, then the copyright is for their lifetime and then another 50 years after death
 - If the ownership is a business/corporation then the copyright is 50 years after the creation of the image and until the end of that calendar year – there is no lifetime consideration

Work for Hire

- Remember that if you are “hired” to capture an image you do not own the copyright for that image unless you negotiate a contract that says you do

Watch Where You Put Pics

- Lastly, watch where you post your images
- It is natural to want to share images, that is why we take them
- Some sites steal your copyright (Facebook)