

Copyright Q & As Tutorial Series Transcript

[What kind of right is copyright?](#)

Hi, I'm Copyright Cate. Welcome to the Copyright Q&As tutorial series. In this tutorial we probe the broad question "what is copyright" by looking at the more specific question, "what kind of right is copyright?" A companion tutorial looks at the related question, "what kind of property is copyright?"

On completion of this tutorial, you will be able to:

- name the world's first copyright law and state where and why it was created, and
- identify the two types of rights belonging to a copyright owner.

It's a simple matter to ask "what is copyright?" but providing a brief answer that is accurate and easy to understand can be challenging.

That's because copyright is an abstract concept. It arose centuries ago to address a particular societal problem. As the fabric and needs of society continue to evolve, so do understandings of the meaning and scope of copyright.

In fact it's not unusual to find widely divergent views on copyright matters, even within the legal profession and among copyright specialists.

We begin our investigation of what copyright is by looking at the kinds of rights that the Copyright Act grants to copyright owners.

One answer to our question, "what kind of right is copyright?" is that copyright is a set of legal rights granted to the creators of intellectual works. In Canada and other common law countries, copyright is said to be a "creature of statute." This means copyright exists only as rights provided in the codified laws of a country.

It's generally agreed that the first copyright law was the United Kingdom's Statute of Anne, enacted in 1710. Since it's therefore the source of modern copyright law, it's useful to consider why the Statute of Anne was enacted.

Some scholars suggest the Statute of Anne's main purpose was regulation of the book trade. Others take a view more in line with the statute's full title, which begins with the words, "An Act for the Encouragement of Learning."

As one legal scholar explains, "the central plank of the 1710 Act was . . . a cultural quid pro quo." Parliament wanted to encourage learned individuals

“to compose and write useful Books,” and in exchange, those individuals were provided with “a guaranteed, if finite, right to print and reprint those works.”

Today it’s widely accepted that copyright is a statute-based societal bargain. The deal is that the state provides an incentive to create intellectual works by granting to creators a time-limited monopoly to use and exploit their copyrighted works. In exchange, society as a whole benefits by having access to works that encourage learning and enrich our lives.

Another answer to the question “what kind of right is copyright” is that it is a set of economic and moral rights. Canada’s current Copyright Act was enacted in 1921 as a close copy of the UK Copyright Act of 1911. Since then, the Canadian Act has had 3 major revisions within the past 30 years. The most recent occurred in 2012.

The main rights granted by the Copyright Act are named in the introductory paragraph of Section 3, which states that copyright, in relation to a work, means a set of sole rights to produce or reproduce, perform in public, and publish for the first time, and to authorize these acts.

Section 3 also lists a further 10 specific rights such as translating a work and communicating it to the public. Whether these are separate additional rights was unclear until the Supreme Court of Canada settled the matter in 2012. In a case called *ESA v SOCAN*, the Court explained “the rights in the introductory paragraph provide the basic structure of copyright” whereas “the rights listed in the subsequent subparagraphs” simply illustrate the three main rights.

This means there are three main bundles of economic rights under the Act, which I call the three “p”s: produce or reproduce, perform in public and publish a work.

The three “Ps” are economic in nature because a copyright owner can assign or license all or any part of the copyrights in a work in any manner desired. To assign a right is to sell or permanently transfer it to another person. Licensing a right is like renting the right to a person under terms that are usually set out in a contract or license agreement.

In addition to economic rights, the Copyright Act grants legally enforceable moral rights to authors, to performers of live aural performances, and to performances captured as sound recordings. There are three types of moral rights. One is the right to the integrity of a work or performance. Another is the right to be known as the author or performer or to remain anonymous.

The third is the moral right not to be associated with a product, service, cause or institution that would harm a creator's honour or reputation.

Unlike economic rights under the Act, moral rights cannot be given away or assigned to someone else although they can be waived.

Thanks for viewing this tutorial in our Copyright Q&A series. You can check out the Sources used in this tutorial as well as Further Information if you'd like to find out more about copyright.