

## Copyright Q & As Tutorial Series Transcript

### [What works does copyright protect?](#)

Hi, I'm Copyright Cate. Welcome to the Copyright Q&As tutorial series.

The Canadian Copyright Act covers two broad types of materials: works and other subject matter. In this tutorial we focus on works that are protected under the Copyright Act. A companion tutorial looks at other subject matter.

On completion of this tutorial you will be able to:

- recognize the four categories of works protected by the Copyright Act, and
- identify materials that qualify as works under the Act.

The Copyright Act states that copyright protects "every original literary, dramatic, musical and artistic work." This includes "every original production in the literary, scientific or artistic domain" no matter what mode or form they're expressed in.

Examples of works that are listed in the Copyright Act include:

- books,
- pamphlets and other writings,
- lectures,
- dramatic works,
- musical works,
- translations, and
- illustrations.

So the kinds of original works that copyright can protect cover a wide range of intellectual creations expressed in any mode or form. Let's see how the Copyright Act describes each of the four categories of copyrightable works.

The earliest copyright acts protected only literary works. But what is a "literary work"? When we're talking about copyright, a common misconception is to understand "literary work" in its everyday sense—a piece of literature such as a sonnet or short story. The Copyright Act doesn't define literary work, but the Act does specify that it "includes tables, computer programs and compilations of literary works."

Whenever questions arise about the meaning or correct application of statutory provisions, it's the job of the courts to resolve them through statutory interpretation. Judicial rulings in prior cases collectively form what

is known as case law. Case law tells us that a literary work is a work expressed in print or writing – in other words, a creation comprising words, numbers or other written characters, regardless of the quality of the writing.

Other examples of forms of writing that are literary works include

- novels,
- biographies,
- histories,
- academic articles and theses,
- newspaper articles,
- instruction manuals,
- rough drafts of any of these writings, and
- private diaries.

Less obvious examples that courts have ruled to be copyrighted literary works include

- routine business letters,
- exam papers,
- legal contracts and forms,
- meeting minutes,
- telegraph codes, and
- Sudoku puzzles.

The Copyright Act says a dramatic work includes three kinds of things:

- publicly performed choreography or mime pieces that have their staging or acting form captured in a material form such as print or video,
- cinematographic works (or, in other words, films and videos), and
- compilations of dramatic works.

Again, since the Act doesn't define dramatic work, we look to case law for a more complete definition. In British case law, a dramatic work has been described as a "work of action, with or without words or music, which is capable of being performed before an audience."

Although we could consider a play or movie script to be a literary work if it's expressed in writing, for copyright purposes it's usually categorized as a dramatic work because it is a public performance piece whose staging and acting forms are recorded in a written form. In addition to plays, operas, and performance art, other examples of forms of dramatic work include

- choreographed dance,
- marching bands and parades,
- figure skating routines,
- circus performances, and
- possibly some video games if they include material that is similar to the kinds of content found in films.

Musical work is the only category of work that is defined in the Copyright Act, although it does so in a circular manner. According to the Act, a “musical work means any work of music or musical composition, with or without words, and includes any compilation.” An earlier version of the Act more helpfully defined musical work as “any combination of melody and harmony, or either of them, printed, reduced to writing or otherwise graphically produced or reproduced.”

Today a musical work can be captured as a written or printed musical score or sheet music. But since fixing or capturing it in a graphic form is no longer necessary, it could also be captured as a sound or video recording.

It probably comes as no surprise to learn that the Copyright Act does not define artistic work. Instead, the Act simply provides examples of what it includes. These are some examples of artistic works listed in the Act:

- paintings
- drawings
- maps
- charts
- plans
- photographs
- sculptures
- architectural works, and
- compilations of artistic works

Unfortunately, case law does not provide us with clear guidance regarding whether an artistic work has to be “artistic.” One legal expert suggests the best approach may be to consider the essential quality of an artistic work to be the expression of ideas in a visual medium as opposed to a literary, dramatic or musical medium.

Perhaps you’ve noticed the definitions of the four categories of work in the Copyright Act all specify that they include a compilation of works in that category. The Act says a “compilation” is a work that results from the selection or arrangement of literary, dramatic, musical or artistic works or parts of such works.

So a compilation of copyrighted works is itself a distinct copyrighted work. An example is an anthology of contemporary short stories written by different authors. Each included short story will be copyrighted, but in addition, the person who selected and arranged the stories will have copyright in the compiled anthology of short stories.

What if you have an anthology containing a mixture of works – say, some short stories, some one-act plays, and some tunes expressed in printed musical notation? The Copyright Act tells us that if a compilation contains works from two or more of the four categories of works, it will be deemed to be a compilation of the category making up the most substantial part of the compilation.

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.